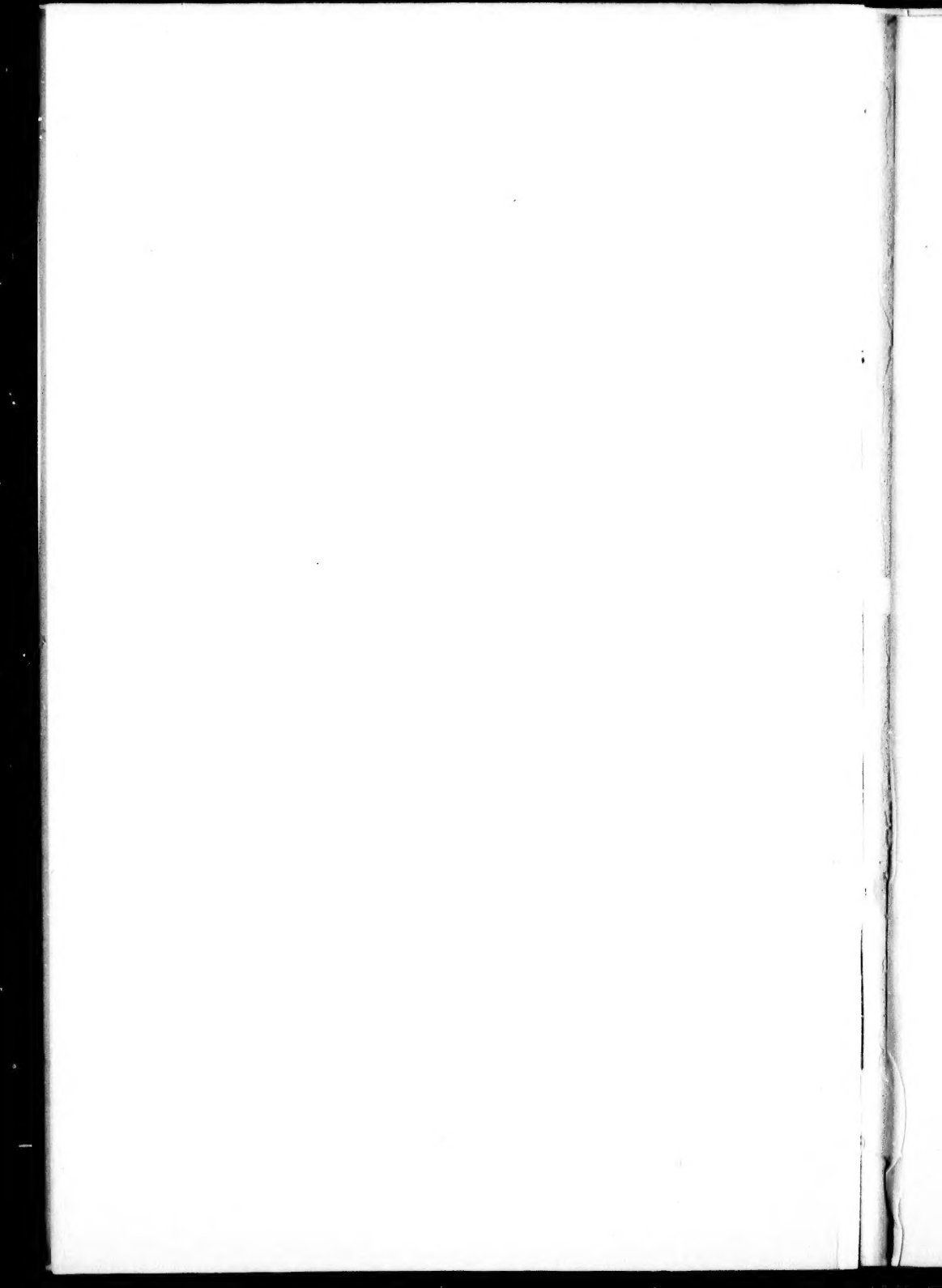


BILLS OF EXCHANGE, CHEQUES
AND
PROMISSORY NOTES.



THE
BILLS OF EXCHANGE ACT, 1890,

BEING AN ACT RELATING TO

BILLS OF EXCHANGE, CHEQUES AND
PROMISSORY NOTES

(53 Victoria, Chapter 33 of the Acts of the Parliament of Canada)

TOGETHER WITH AN

INTRODUCTION, EXPLANATORY NOTES
AND AN INDEX

BY

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INTRODUCTION.

The Bills of Exchange Act, 1890 (53 Vict., ch. 33) which forms the text of this hand-book, is a reproduction with some modifications, of the Imperial Statute, 45 and 46 Vict., ch. 61, entitled "An Act to codify the law relating to Bills of Exchange, Cheques and Promissory Notes" — short title, — "The Bills of Exchange Act, 1882."

The Canadian Act was introduced in the House of Commons by Sir John Thompson, Minister of Justice, early in the session of 1889, but after considerable progress had been made in committee, it was withdrawn owing to press of other public business. It was again introduced by Sir John Thompson in the session of 1890 and after revision by Commons and Senate, was assented to, on the 16th May, 1890. By special provision, however, the Act only comes into force on the 1st September, 1890, and is not retroactive.

A perusal of the debates of both Houses, shows that a general desire was manifested by honorable members and senators, to deviate as little as possible from the text of the English Act, so that we might have in Canada, the obvious advantages in respect of the important subjects with which the Act deals, of uniform legislation

through Canada and the mother country, and the application of whatever jurisprudence might grow up around the law in both lands.

The differences between the English and Canadian Acts include some slight verbal changes ; other changes in respect of presentments, protests and forged bills ; and, also the result of the incorporation of already existing enactments of our Parliament of proved utility and advantage. These differences have been as far as possible, indicated in the text by brackets [], so that the practitioner or student in referring to English jurisprudence may readily perceive its applicability. The effect of this Act being to alter the law in a number of more or less important particulars, the changes in the law and the positive declarations upon points that have hitherto been uncertain, have been indicated by the simple devices of italics, with the exception of the sections relating to crossed cheques, which are all new.

By the British North America Act 1867 (30-31 Vict., ch. 3, sec. 91, sub-sec. 18) Bills of Exchange and Promissory Notes are placed amongst those subjects which are reserved for the exclusive legislative authority of the Parliament of Canada. This power has now been exercised for the first time and accordingly all previous enactments hitherto in force in the provinces, have been repealed, as will be seen on reference to the second schedule forming part of the Act. An exception to this general repeal exists however, as regards the Province of Quebec, where two articles of the Civil Code under the title of Bills of Exchange have been retained. These articles 2341 and 2342, relate to evidence and enact that in matters doubtful and unprovided for, recourse must

be had to the laws of England in force on the 30th May, 1849.

The English Statute which, as has been stated, forms the basis of the Canadian Statute, was drafted by the Hon. Judge Chalmers, who had previously prepared and published a Digest or Codification of the English law on bills of exchange. In the House of Commons the Bill had the great advantage of being in charge of Sir Farrer Herschell (now Lord Herschell) while Lord Bramwell piloted it through the House of Lords. Besides, in the House of Commons after the second reading, it was referred to a Select Committee composed of leading merchants, bankers and lawyers who tested and revised it with great care. It is not surprising therefore, that English merchants and bankers have found the Statute of great practical service.

A similar result may be fairly predicted for the Canadian Act. Sir John Thompson, in our Commons, and the Hon. Mr. Abbott, in the Senate, have both, like their English compeers and as Hansard well discloses, devoted great powers of elucidation and commendable energy and ability in conducting the Bill through Parliament. In this task they received valuable aid (if it be not invidious to mention some names), from Messrs. Weldon, Mills, Davies, Mitchell, Patterson, in the Commons, and the Hon. Messrs. Power, Drummond, Scott, Kaulbach and Ogilvy in the Senate.

In view of the fact that Judge Chalmers' admirable work (1) is replete with all essential annotation and comment, it has not seemed necessary to swell the pro-

(1) A digest of the law of Bills of Exchange, London, 1887.

portions of the present work beyond the requirements of a brief Manual or Hand-book. Such comments and references only as seemed desirable for the better elucidation of occasional sections have been made. Those who desire a more intimate acquaintance with the jurisprudence which illustrates the text cannot do better than consult Judge Chalmers' book, to which, as will be seen, I have frequently referred.

It was the compiler's intention to collate Canadian jurisprudence with the text, but a desire to keep the book within modest limits and to supply the immediate demand for the text of the law in a form convenient for ready reference, has led him to postpone such an undertaking for the present.

The changes in the law which this Act effects are not very numerous, but some of them are important and may be briefly stated.

Heretofore a bill payable to the holder of an office for the time being, *e.g.* a Secretary, Treasurer or President, was considered invalid by reason of uncertainty. By sec. 7 such bills are now valid.

A bill payable *e.g.* to "John Smith" without the words "or order" has been hitherto held to be non-negotiable. Under sec. 9 such a bill is now negotiable.

The Act also contains provisions for inserting in a bill the true date of issue or acceptance by any holder when such date has been omitted. (Sec. 12.)

Formerly, under article 2290 of the Civil Code for Lower Canada, it was obligatory to resort to the referee in case of need. Such resort is now optional, but a bill must be protested for non-payment before it can be legally presented to the referee in case of need. (sec. 66.)

A corporation can now issue a bill or note under its seal without signature, although its seal is not necessary if there be a correct signature. (sec. 91.) Under sec. 22, a corporation can legally make a bill if the power to do so has been conferred upon it by its charter. It is, however, *ultra vires* of the Provincial Legislatures to confer such power. (B. N. A. Act, sec. 91, sub-sec. 18.)

The first paragraph of section 24 gives effect to the well established principle that a forged or unauthorized signature is wholly inoperative, and so far, it is an exact reproduction of the corresponding section of the English Act. Under the English Act, however, bankers who may pay demand drafts held under forged indorsements are protected. This feature of the English Act has not been reproduced in the Canadian Act, but section 24 has been amended so that the drawer of a cheque shall have no right of action against a drawee who has charged the drawer with a cheque paid under a forged or unauthorized signature unless notice of such forgery be given in writing to the drawee within a year after the knowledge of the forgery is acquired.

The protest for better security against the drawer and indorsers (sec. 51) when an acceptor becomes insolvent or suspends payment, is new to our law, but is quite consistent with article 1092 of the Civil Code of Lower Canada, which enacts that the debtor cannot claim the benefit of the term (or unexpired delay) when he has become insolvent. In Germany when the acceptor fails during the currency of a bill, the holder can demand security from the drawer and indorsers, and in France he can at once cause the bill to be protested for non-payment. The effect of this section will be that a bill

protested for better security may be accepted *suprà* protest for honor. see sec. 65.

The provisions of Act 2296 of the Civil Code as to acceptance for honor after protest for non-payment are not to be found in the Act, and the acceptance for honor can only be offered after protest for non-acceptance or for better security, and before maturity. (sec. 65.)

Where the drawee is dead, presentment for acceptance may now be made to his personal representative or it may be treated as dishonored by non-acceptance. (sec. 41.)

A presentment through the post-office is sufficient where authorized by agreement or usage. (sec. 45.) This gives effect to a well established custom in England and the United States.

Three days are now given for the acceptance of a bill, viz: the day of actual presentment and two days thereafter. If not then accepted it must be treated for non-acceptance. (Sec. 17.)

The English Act treats an acceptance to pay at a particular place as a qualified acceptance which, by sec. 44, the holder may refuse to take, but the Canadian Act has not reproduced this provision.

If a bill be payable at a particular place, it must be presented for payment at that place, else the holder may be obliged to pay the costs of any suit that may have been taken, if the party liable shows that money had been provided for the payment of the bill. (sec. 86.)

Art. 2285 Civil Code provided that the words "value received" created a presumption, that the amount mentioned in the bill had been received thereon, but now such presumption will exist without such words.

The acceptance must now be written on the bill itself,

but the simple signature of the acceptor without other words denoting acceptance is sufficient.

A bill payable on demand must be protested within a reasonable time or the indorser will be discharged, but not if with the assent of the indorser the bill has been delivered as a collateral or continuing security. (sec. 85). A person signing a bill otherwise than as a drawer or acceptor, *e. g.* as an indorser *pour aval*, is entitled to be protested.

In the Province of Quebec the right to serve notice of protest at any time within three days next after the day on which the bill is protested, is now abrogated, and must be exercised not later than the next following juridical day. (Sec. 49.) The protest or noting for non-payment must be made after three o'clock in the afternoon of the last day of grace. (Sec. 51.)

The provisions of the English Act as to crossed cheques have also been incorporated in the Canadian Act. Crossed cheques are but little if at all used in this country, but the growth of commerce and finance will undoubtedly lead to a widespread use of these convenient instruments. The practice appears to have originated in the Clearing House, and was afterwards adopted outside. A crossed cheque operates as a caution to a banker or other holder, and as a general rule bankers refuse to pay it to any one except a banker. In this way the person for whose use the money is received may be easily traced. The reason crossed cheques are not more in vogue in this country probably is, that banks exercise greater caution in paying cheques here than in England, where the presumptions of law are not so stringent against bank and bankers.

The foregoing summary embraces the more prominent changes enacted by the Act. A perusal of the Act will disclose others which do not call for special comment as the sections are for the most part, clearly and intelligibly drawn,

ROBT. STANLEY WEIR.

No. 186 St. James Street.

Montreal, June 23rd, 1890.

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THE BILLS OF EXCHANGE ACT, 1890.

PART I.

PRELIMINARY.

1. This Act may be cited as "*The Bills of Exchange Act, 1890.*" Short title.

2. In this Act, unless the context otherwise Interpretation requires,—

(a.) The expression "Acceptance" means "Acceptance," an acceptance completed by delivery or notification ;

(b.) The expression "Action" includes "Action," counter claim and set off ;

(c.) The expression "Bank" means an "Bank," incorporated bank or savings bank carrying on business in Canada ;

Under the Imperial Act upon which the present Act is based, the expression "Banker" includes a body of persons, whether incorporated or not, who carry on the business of banking.

(d.) The expression "Bearer" means the "Bearer," person in possession of a bill or note which is payable to bearer ;

(e.) The expression "Bill" means bill of "Bill ;" exchange, and "Note" means promissory "Note." note ;

(f.) The expression "Delivery" means "Delivery."

2 *The Bills of Exchange Act, 1890.*

transfer of possession, actual or constructive, from one person to another ;

A person has constructive possession when the Bill is in the possession of his clerk or agent in that person's behalf.

"Holder."

(g.) The expression "Holder" means the payee or indorsee of a bill or note who is in possession of it, or the bearer thereof ;

"Indorsement."

(h.) The expression "Indorsement" means an indorsement completed by delivery ;

"Issue."

(i.) The expression "Issue" means the first delivery of a bill or note, complete in form, to a person who takes it as a holder ;

"Value."

(j.) The expression "Value" means valuable consideration ;

"Defence."

(k.) The expression "Defence" includes counter-claim.—(45-46 Vict. ch. 61, sec. 2. *Statutes of Great Britain.*)

This Act deals only with Bills of Exchange, Cheques and Promissory Notes. It does not apply to other negotiable instruments such as negotiable Bonds or Scrip.

Following the general rule of law applicable to Statutes, this Act is not retroactive or retrospective.

PART II.

BILLS OF EXCHANGE.

Form and Interpretation.

Bill of exchange defined.

3. A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay, on demand or at a fixed or determinable future time, a sum certain in money to or to the order of a specified person, or to bearer :

Exact definitions are proverbially rare, and the foregoing definition is conspicuously inexact. A Bill of Exchange is defined as an *unconditional* order in writing, and yet no fewer than five conditions are appended as requisite to complete it! Further by a curious contradiction in terms, it is declared (*vide* sub-sec. 2) that an instrument which does not comply with *these conditions*, is not a Bill of Exchange! The meaning intended is, of course, not, that the whole instrument must be unconditional; but that the *order to pay* must be unconditional.

In the words of the discarded article 2279 of our Civil Code (which is Chancellor Kent's definition approved by Judge Story) "a Bill of Exchange is a written order by one person to another for the payment of money absolutely and at all events."

There must in point of form, be three parties to a Bill of Exchange in its origin, and two of these at least, must be different persons. They are:

1. The Drawer.

2. The Drawer, who becomes the Acceptor, by signing his assent to the Bill.

3. The Payee.

The Drawer and Payee may be the same person or firm, *ie.* a Bill may be drawn payable to the drawer or his order.

2. An instrument which does not comply with these conditions, or which orders any act to be done in addition to the payment of money, is not, except as hereinafter provided, a bill of exchange:

When instrument is not such bill.

3. An order to pay out of a particular fund is not unconditional within the meaning of this section; but an unqualified order to pay, coupled with (a) an indication of a particular fund out of which the drawee is to reimburse himself, or a particular account to be debited with the amount, or (b) a statement of the transaction which gives rise to the bill, is unconditional:

Unconditional order defined.

ILLUSTRATIONS.—1. Pay C. or order \$500 out of the money in your hands belonging to the X. company. Held, invalid as a Bill of Exchange.

4 *The Bills of Exchange Act, 1890.*

2. Pay C. or order \$500 out of the money in due form X. as soon as you receive it. Held, invalid as a Bill of Exchange.

3. Pay C. or order \$500 as my quarterly half pay due 1st February by advance. Held, valid as a Bill of Exchange.

4. Pay C. or order \$500 against credit No. 20 and place it to account, as advised per X & Co. Held, valid as a Bill of Exchange.

For English and American authorities collected and reviewed see *Munger and Shannon* (1870) 61 N. Y. R. 251; and *Corbett v. Clark* (1878) 30 Amer. R. 763.

Bill is not invalid for reasons specified.

4. *A bill is not invalid by reason—*

(a.) *That it is not dated ;*

As to filling in the date in the case of an undated Bill or Acceptance, see sec. 12 and 20 *post*. The alteration of the date is a material alteration, sec. 64 (2).

(b.) *That it does not specify the value given, or that any value has been given therefor ;*

Whether a Bill expresses that value has been given or not, extrinsic evidence is admissible between immediate parties and those in privity with them, to impeach the consideration, and show its absence, failure, or illegality. (*Abrey v. Cruz*, L. R. 5 C. P. 37.)

(c.) *That it does not specify the place where it is drawn or the place where it is payable. (Ibid. sec. 3.)*

Inland and foreign bills.

4. An inland bill is a bill which is, or on the face of it purports to be, (a) both drawn and payable within Canada, or (b) drawn within Canada upon some person resident therein. Any other bill is a foreign bill :

If not noted as foreign.

2. *Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill : (Ibid. sec. 4.)*

5. A bill may be drawn payable to, or to the order of, the drawer; or it may be drawn payable to, or to the order of, the drawee:

If different parties to bill are the same person.

A bill is sometimes drawn in the form, "Pay to your own order," when the drawee acts in two different capacities, *e. g.* if he be in business on his own account, and also agent for some other person interested in the bill. *Pardessus* §339.

2. Where in a bill drawer and drawee are the same person, (5) or where the drawee is a fictitious person, or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or as a promissory note. (*Ibid. sec. 5.*)

Option of holder in case specified.

As when a person does business in two cities, and draws from one on the other.

6. The drawee must be named or otherwise indicated in a bill with reasonable certainty:

Drawee to be named.

2. A bill may be addressed to two or more drawees, whether they are partners or not; but an order addressed to two drawees in the alternative, or to two or more drawees in succession is not a bill of exchange. (*Ibid. sec. 6.*)

If there are more than one.

By sec. 19 (*d*) the acceptance of some one or more of the drawees, but not of all is a qualified acceptance.

This section does not conflict with sec. 15 which provides as to a referee or drawee in case of need.

7. Where a bill is not payable to bearer, the payee must be named or otherwise indicated therein with reasonable certainty:

Certainty required as to payee.

2. A bill may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees. *A bill may also be made payable to the holder of an office for the time being:*

If payable to two or more payees, or to holder of office.

6 *The Bills of Exchange Act, 1890.*

Heretofore a bill payable *e. g.* to the Treasurer or other official of a society was considered invalid as a Bill, by reason of uncertainty. This section makes the law clear, and such Bills are now valid.

If payee is
non-existing.

3. *Where the payee is a fictitious or non-existing person, the bill may be treated as payable to bearer. (Ibid.)*

This is supplemented by sec. 54, which provides that the acceptor is precluded from denying to a holder in due course, the existence of the payee and his then capacity to indorse; and by sec. 55 which enacts that the drawer is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse, and that the indorser is precluded from denying to a holder in due course the genuineness and regularity of all previous indorsements. *Vide* secs. 54 and 55 *post*.

Certain bills
valid but not
negotiable.

8. *When a bill contains words prohibiting transfer, or indicating an intention that it should not be transferable, it is valid as between the parties thereto, but it is not negotiable:*

Payable to
order or
bearer.
To bearer.

2. A negotiable bill may be payable either to order or to bearer:

3. *A bill is payable to bearer which is expressed to be so payable, or on which the only or last indorsement is an indorsement in blank:*

To order.

4. *A bill is payable to order which is expressed to be so payable, or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it should not be transferable:*

A bill payable *e. g.* to "John Smith" without the words "or order" has been hitherto held to be non-negotiable. Under the Act such a Bill is now negotiable.

Option of
payee.

5. Where a bill, either originally or by indorsement, is expressed to be payable to the order of a specified person, and not to him or

his order, it is nevertheless payable to him or his order, at his option. (*Ibid.*)

9. The sum payable by a bill is a sum certain Sum payable. within the meaning of this Act, although it is required to be paid—

(a.) With interest;

The legal rate of interest at present is 6 per cent, and is the rate presumed, in default of any other rate being specially mentioned. (R. S. C. ch. 127, sec. 2.

(b.) By stated instalments;

(c.) By stated instalments, with a provision that upon default in payment of any instalment the whole shall become due;

(d.) According to an indicated rate of exchange, or according to a rate of exchange to be ascertained as directed by the bill:

2. Where the sum payable is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the amount payable. Discrepancy between figures and words.

3. Where a bill is expressed to be payable with interest, unless the instrument otherwise provides, interest runs from the date of the bill, and if the bill is undated, from the issue thereof. (*Ibid.*) Interest.

10. A bill is payable on demand—

(a.) Which is expressed to be payable on demand, or on presentation; or—

(b.) In which no time for payment is expressed:

2. Where a bill is accepted or indorsed when it is overdue, it shall, as regards the acceptor who so accepts, or any indorser who so indorses it, be deemed a bill payable on demand. (*Ibid.*) Acceptance, &c., when overdue.

Bill payable on demand.

Bill payable
at a future
time.

11. A bill is payable at a determinable future time, within the meaning of this Act, which is expressed to be payable—

(a.) At a fixed period after date or sight :

(b.) On or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening is uncertain :

As to contin-
gencies.

2. An instrument expressed to be payable on a contingency is not a bill, and the happening of the event does not cure the defect. (*Ibid.*)

Omission of
date in bill
payable after
date.

12. Where a bill expressed to be payable at a fixed period after date is issued undated, or where the acceptance of a bill payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the bill shall be payable accordingly ;

This section throws any possible inconvenience that may arise from the omission to date the bill on the negligent party who omitted to date the bill. *Chalmers*, 29.

As to wrong
date.

Provided that (a) where the holder in good faith and by mistake inserts a wrong date, and (b) in every case where a wrong date is inserted, if the bill subsequently comes into the hands of a holder in due course, the bill shall not be voided thereby, but shall operate and be payable as if the date so inserted had been the true date. (*Ibid.*)

Date *prima*
facie evidence.

13. Where a bill or an acceptance, or any indorsement on a bill, is dated, the date shall, unless the contrary is proved, be deemed to be the true date of the drawing, acceptance, or indorsement, as the case may be :

Certain dat-
ing not to in-
validate.

2. A bill is not invalid by reason only that it is antedated or postdated, or that it bears

date on a Sunday [or other non-juridical day.]
(*Ibid.*)

14. Where a bill is not payable on demand, the day on which it falls due is determined as follows :—

Computation
of time of
payment.

(a.) Three days, called days of grace, are, in every case where the bill itself does not otherwise provide, added to the time of payment as fixed by the bill, and the bill is due and payable on the last day of grace: Provided that—

Days of grace.

(1.) Whenever the last day of grace falls on a legal holiday or non-juridical day in the Province where any such bill is payable, then the day next following, not being a legal holiday or non-juridical day in such Province, shall be the last day of grace:

Non-juridical
days.

Under the Imperial Act, when the last day of grace falls on Sunday, Christmas Day, Good Friday, or a day appointed by Royal Proclamation as a public fast or thanksgiving day, the bill is due payable on the preceding business day; except when the last day of grace is a bank holiday other than the holidays just mentioned, or when the last day of grace is a Sunday, and the second day of grace is a Bank Holiday, the bill is due and payable on the succeeding business day.

2. In all matters relating to bills of exchange the following and no other shall be observed as legal holidays or non-juridical days, that is to say:

What shall be
such.

(a.) In all the Provinces of Canada, except the Province of Quebec—

In all Prov-
inces except
Quebec.

Sundays ;

New Year's Day ;

Good Friday ; (a movable festival.)

Easter Monday ; (a movable festival.)

Christmas Day ;

The birthday (or the day fixed by proclama-

tion for the celebration of the birthday) of the reigning Sovereign ; and if such birthday is a Sunday, then the following day ;

The first day of July (Dominion Day), and if that day is a Sunday, then the second day of July as the same holiday ;

Any day appointed by proclamation for a public holiday, or for a general fast, or a general thanksgiving throughout Canada ; and the day next following New Year's Day and Christmas Day when those days respectively fall on Sunday ;

In Quebec.

(b.) And in the Province of Quebec the said days, and also—

The Epiphany ;

Epiphany (*le jour des Rois*) is observed on the 6th of January.

The Annunciation ; (25th of March.)

The Ascension ; (a movable festival.)

Corpus Christi ; (a movable festival.)

St. Peter and St. Paul's day ; (24th of June.)

All Saints' Day ; (1st November.)

Conception Day ; (8th December.)

In every Province.

(c.) And also, in any one of the Provinces of Canada, any day appointed by proclamation of the Lieutenant Governor of such Province for a public holiday, or for a fast or thanksgiving within the same, or being a non-juridical day by virtue of a statute of such Province :

Days to be computed when time begins to run.

3. Where a bill is payable at sight, or at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run and by including the day of payment : (*Ibid.* sec. 14, sub-sec. 2.)

When time begins to run.

4. Where a bill is payable at sight or a fixed period after sight, the time begins to run

from the date of the acceptance if the bill is accepted, and from the date of noting or protest if the bill is noted or protested for non-acceptance, or for non-delivery : (*Ibid. sub-sec. 3.*)

5. The term "Month" in a bill means the "Months," calendar month : (*Ibid. sub-sec. 4.*)

[6. Every bill which is made payable at a month or months after date becomes due on the same numbered day of the month in which it is made payable as the day on which it is dated—unless there is no such day in the month in which it is made payable, in which case it becomes due on the last day of that month—with the addition, in all cases, of the days of grace.] (*Revised Statutes of Canada, ch. 123. sec. 1.*)

15. The drawer of a bill and any indorser may insert therein the name of a person to whom the holder, may resort in case of need, that is to say, in case the bill is dishonored by non-acceptance or non-payment. Such person is called the referee in case of need. *It is in the option of the holder to resort to the referee in case of need or not, as he thinks fit.* (*Ibid.*)

Under the law of the Province of Quebec hitherto, it was obligatory, not optional, to resort to the Referee. See Civil Code 2290.

16. The drawer of a bill, and any indorser, may insert therein an express stipulation—
(a.) Negating or limiting his own liability to the holder ;

ILLUSTRATION.—" Pay D, or order without recourse to me."

(b.) Waiving, as regards himself, some or all of the holder's duties. (*Ibid.*)

ILLUSTRATION.—C. endorses to D., adding "Protest waived." No subsequent holder is obliged to give notice of protest to C.

Definition of acceptance.

17. The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer :

Requisites of acceptance.

2. An acceptance is invalid unless it complies with the following conditions, namely:—

(a.) It must be written on the bill and be signed by the drawee. The mere signature of the drawee without additional words is sufficient ;

(b.) It must not express that the drawee will perform his promise by any other means than the payment of money : (*Ibid.*)

Where name misspelt.

[3. Where in a bill the drawee is wrongly designated or his name is misspelt, he may accept the bill as therein described, adding, if he thinks fit, his proper signature, or he may accept by his proper signature.]

Time for acceptance.

18. A bill may be accepted—

(a.) Before it has been signed by the drawer, or while otherwise incomplete ;

(b.) When it is overdue, or after it has been dishonored by a previous refusal to accept, or by non-payment :

In such a case the Bill would be payable on demand.

Date, in case of acceptance after dishonor.

2. *When a bill payable after sight is dishonored by non-acceptance, and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of first presentment to the drawee for acceptance. (*Ibid.*)*

This provision is intended to put the holder in the same position, as far as possible, as that which he would have held, if the bill had not been dishonored by non-acceptance.

19. An acceptance is either (a) general, or General and qualified acceptances. (b) qualified : a general acceptance assents without qualification to the order of the drawer ; a qualified acceptance in express terms varies the effect of the bill as drawn :

2. In particular, an acceptance is qualified Qualified acceptance. which is—

(a.) Conditional, that is to say, which makes payment by the acceptor dependent on the fulfilment of a condition therein stated, but an acceptance to pay at a particular specified place is not conditional or qualified ;

The following is a conditional acceptance.—
“ Accepted—payable on giving up bills of lading for clover, per ship “ Amazon.” *Smith v. Vertue* (1860) 40 L. J. C. P. 56.

Under the Imperial Act an acceptance to pay at a particular place is a qualified acceptance. The Canadian Act differs in this respect.

(b.) Partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn ;

As where A draws on B. for \$500, and B accepts for \$250.

(c.) Qualified as to time ;

As where A draws on B for \$500, payable two months after date and B accepts payable six months after date.

(d.) The acceptance of some one or more of the drawees, but not of all. (*Ibid.*)

20. Where a simple signature on a blank Inchoate instruments. paper is delivered by the signer in order that it may be converted into a bill, it operates as a *primâ facie* authority to fill it up as a complete bill for any amount, using the signature for that of the drawer, or the acceptor, or an

indorser ; and, in like manner, when a bill is wanting in any material particular, the person in possession of it has a *prima facie* authority to fill up the omission in any way he thinks fit :

When to be filled up.

2. In order that any such instrument when completed may be enforceable against any person who became a party thereto prior to its completion, it must be filled up within a reasonable time, and strictly in accordance with the authority given ; reasonable time for this purpose is a question of fact :

As to subsequent holder.

Provided, that if any such instrument, after completion, is negotiated to a holder in due course, it shall be valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up within a reasonable time and strictly in accordance with the authority given. (*Ibid.*)

ILLUSTRATIONS.—(1) Bill drawn payable to—or order. Any holder for value may write his own or name in the blank, and sue on the bill, (*Cruchly v. Mann*, F. Taunt. 529.)

(2) B gives C a blank acceptance to accommodate him, and without receiving value. After B's death it is filled up and discounted with D, who sees it filled up. D cannot recover the amount from B's estate (*Hatch v. Searles* 24 L. J. Ch. 22.)

3. A blank acceptance by B is *stolen* and then filled up. Even a holder in due course cannot recover from B. The instrument was inchoate and was never delivered. *Boxendale v. Bennet*, 3 Q. B. D. 525, C. A.

Contract not complete until delivery.

21. Every contract on a bill, whether it is the drawer's, the acceptor's or an indorser's, is incomplete and revocable, until delivery of the instrument in order to give effect thereto :

VIDE SEC. 2 (f) *ante* for definition of "delivery."

ILLUSTRATION.—B owes C \$500 and makes a note for the amount payable to C. B dies, and the note is

afterwards found among his papers. C has no right to this note, and if it be given to him he cannot recover. *Cox v. Troy*. 1822 5 B. and Ald. 474.

"In order to make the property in bills pass, it is not sufficient to indorse them. They must be delivered to the indorsee, or the agent of the indorsee. If the indorsee delivers them to his own agent he can recover them; if to the agent of the indorsee he cannot recover them." *Ex parte Côté* (1873) L. R. 9. Ch. 27.

Provided, that where an acceptance is written on a bill, and the drawee gives notice to, or according to the directions of, the person entitled to the bill that he has accepted it, the acceptance then becomes complete and irrevocable :

2. As between immediate parties, and as regards a remote party, other than a holder in due course, the delivery—

(a.) In order to be effectual must be made either by or under the authority of the party drawing, accepting or indorsing, as the case may be ;

(b.) May be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the property in the bill;

But if the bill is in the hands of a holder in due course, a valid delivery of the bill by all parties prior to him, so as to make them liable to him, is conclusively presumed :

3. Where a bill is no longer in the possession of a party who has signed it as drawer, acceptor or indorser, a valid and unconditional delivery by him is presumed until the contrary is proved. (*Ibid.*)

Capacity and Authority of Parties.

22. Capacity to incur liability as a party to a bill is co-extensive with capacity to contract.

As to Corporations.

Provided, that nothing in this section shall enable a corporation to make itself liable as drawer, acceptor or indorser of a bill, unless it is competent to it so to do under the law for the time being in force relating to such corporation :

This provision will enable a corporation to make a Bill if the power to do so has been conferred upon it by its charter.

It is *ultra vires* of the Provincial Legislatures to confer such power.

A corporation which is not empowered by its charter to make or indorse Bills of Exchange or Promissory Notes, cannot validly do so.

In the Province of Quebec (Civil Code 1301), a wife cannot bind herself with or for her husband, otherwise than as being common as to property; any such obligation contracted by her in any other quality is void and of no effect.

Drawing or indorsing by person not competent.

2. Where a bill is drawn or indorsed by an infant, minor, or corporation having no capacity or power to incur liability on a bill, the drawing or indorsement entitles the holder to receive payment of the bill, and to enforce it against any other party thereto. (*Ibid.*)

Signature essential to liability.

23. No person is liable as drawer, indorser, or acceptor of a bill who has not signed it as such : Provided that—

Exceptions.

(a.) Where a person signs a bill in a trade or assumed name, he is liable thereon as if he had signed it in his own name ;

(b.) The signature of the name of a firm is equivalent to the signature by the person so signing of the names of all persons liable as partners in that firm. (*Ibid.*)

In the Province of Quebec, it is sufficient in actions upon Bills of Exchange or Promissory Notes to give the initials of the Christian or first names of the defendant, as written upon such bills, notes or instrument. (Art. 49 Code of Civil Procedure.)

24. Subject to the provisions of this Act, where a signature on a bill is forged or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorized signature is wholly inoperative, and no right to retain the bill or to give a discharge therefor or to enforce payment thereof against any party thereto can be acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority :

Forged or unauthorized signature.

For the Province of Quebec Article 145 of the Code of Civil Procedure provides as follows : "Every denial of signature to a Bill of Exchange, Promissory Note, or other private writing or document upon which any claim is founded, must be accompanied with an affidavit of the party making the denial, or of some person acting as his agent or clerk, and cognizant of the facts in such capacity, that such instrument or some material part thereof is not genuine, or that his signature or some other on the document is forged, or, in the case of a Promissory Note or Bill of Exchange, that the necessary protest, notice and service have not been regularly made, stating in what the irregularity consists; without prejudice however to the recourse of such party by improbation."

The word "precluded" was inserted in the Imperial Act in lieu of the word "estopped" in deference to the law of Scotland which does not make use of the English expression. A forgery cannot be ratified, yet a person whose signature has been forged may by his conduct be estopped from denying its genuineness to an innocent holder, as where he declares a forgery of his signature to be genuine. *Brook v. Hook* (1871) L. R. 6 Ex. 100, cited by *Chalmers* at p. 66.

Provided that nothing in this section shall affect the ratification of an unauthorized signature not amounting to a forgery : (*Ibid.*) [*And provided also, that if a cheque, payable to order, is paid by the drawee upon a forged indorse-*

Proviso.

ment out of the funds of the drawer, or is so paid and charged to his account, the drawer shall have no right of action against the drawee for the recovery back of the amount so paid, or no defence to any claim made by the drawee for the amount so paid, as the case may be, unless he gives notice in writing of such forgery to the drawee within one year after he has acquired notice of such forgery ; and in case of failure by the drawer to give such notice within the said period, such cheque shall be held to have been paid in due course as respects every other party thereto or named therein, who has not previously instituted proceedings for the protection of his rights.]

Proviso : as to payment on forged indorsement.

Procuration signatures.

25. A signature by procuration operates as notice that the agent has but a limited authority to sign, and the principal is bound by such signature only if the agent in so signing was acting within the actual limits of his authority. (*Ibid.*)

Person signing as agent or in representative capacity.

26. *Where a person signs a bill as drawer, indorser or acceptor, and adds words to this signature indicating that he signs for or on behalf of a principal, or in a representative character, he is not personally liable thereon ; but the mere addition to his signature of words describing him as an agent, or as filling a representative character, does not exempt him from personal liability :*

He who desires to avoid personal liability, should sign the name of his principal to the bill and then add words showing that he is merely an agent ; but if he signs his own name first he will be personally liable, notwithstanding any words added thereto, which declare him an agent. Unless he says plainly, " I am the mere scribe," he is liable.

Rule for determination of signature.

2. In determining whether a signature on a bill is that of the principal or that of the agent

by whose hand it is written, the construction most favorable to the validity of the instrument shall be adopted. (*Ibid.*)

The Consideration for a Bill.

27. Valuable consideration for a bill may be constituted by—

(a.) Any consideration sufficient to support a simple contract ;

(b.) An antecedent debt or liability ; such a debt or liability is deemed valuable consideration, whether the bill is payable on demand or at a future time :

2. Where value has at any time been given for a bill, the holder is deemed to be a holder for value as regards the acceptor and all parties to the bill who became parties prior to such time :

3. Where the holder of a bill has a lien on it, arising either from contract or by implication of law, he is deemed to be a holder for value to the extent of the sum for which he has a lien. (*Ibid.*)

A Bill is *prima facie* presumed to have been negotiated to the holder for value, and not to have been pledged or deposited as collateral security.

The "discount" of a bill must be distinguished from the pledge or deposit of a bill as security. A discounter is a holder for full value. The holder of a bill as security must use due diligence with reference to it. He must not part with it ; he must, if he can, collect it at maturity ; if he cannot he should protest the parties to it. *Peacock v. Purcell* (1863) 32 L. J. C. P. 266.

A banker has, in the absence of an agreement to the contrary, a lien on all bills received from a customer in the ordinary course of banking business in respect of any balance that may be due from such customer. *Chalmers*, 77.

Accommodation party to a bill.

28. An accommodation party to a bill is a person who has signed a bill as drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person :

His liability.

2. An accommodation party is liable on the bill to a holder for value ; and it is immaterial whether, when such holder took the bill, he knew such party to be an accommodation party or not. (*Ibid.*)

Holder in due course.

29. A holder in due course is a holder who has taken a bill, complete and regular on the face of it, under the following conditions, namely—

(a.) That he became the holder of it before it was overdue and without notice that it had been previously dishonored, if such was the fact ;

(b.) That he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it :

Notice means actual knowledge, not necessarily formal notification.

Title defective in cases specified.

2. In particular, the title of a person who negotiates a bill is defective within the meaning of this Act when he obtained the bill, or the acceptance thereof, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud :

The Civil Code of Lower Canada provides that error, fraud, violence or fear give a right of action or exception to annul or rescind contracts. Arts. 991, 1000.

3. A holder, whether for value or not, who derives his title to a bill through a holder in due course, and who is not himself a party to any fraud or illegality affecting it, has all the rights of that holder in due course as regards the acceptor and all parties to the bill prior to that holder. (*Ibid.*)

Right of subsequent holder.

30. Every party whose signature appears on a bill is *primâ facie* deemed to have become a party thereto for value :

Presumption of value and good faith.

2. And every holder of a bill is *primâ facie* deemed to be a holder in due course ; but if, in an action on a bill, it is admitted or proved that the acceptance, issue or subsequent negotiation of the bill is affected with fraud, duress, or force and fear, or illegality, the burden of proof that he is such holder in due course shall be on him, unless and until he proves that, subsequent to the alleged fraud or illegality, value has in good faith been given for the bill [by some other holder in due course :] (*Ibid.*)

On whom burden of proof lies.

See *Chalmers* pp. 84-91 for illustration and exposition of this section.

[3. No bill, although given for a usurious consideration or upon a usurious contract, is void in the hands of a holder, unless such holder had at the time of its transfer to him actual knowledge that it was originally given for a usurious consideration, or upon a usurious contract :] (R. S. C. ch. 123, sec. 17.)

Usurious consideration.

[4. Every bill or note the consideration of which consists, in whole or in part, of the purchase money of a patent right, or of a partial interest, limited geographically or otherwise, in a patent right, shall have written or printed prominently and legibly across the face thereof, before the same is issued, the

Consideration consisting of purchase money of patent right.

words "given for a patent right:" and without such words thereon such instrument and any renewal thereof shall be void, except in the hands of a holder in due course without notice of such consideration :] (R. S. C. ch. 123, sec. 12.)

Liability of transferee.

[5. The indorsee or other transferee of any such instrument having the words aforesaid so printed or written thereon, shall take the same subject to any defence or set-off in respect of the whole or any part thereof which would have existed between the original parties:] (R. S. C. ch. 123, sec. 13.)

Penalty.

[6. Every one who issues, sells or transfers, by indorsement or delivery, any such instrument not having the words "given for a patent right" printed or written in manner aforesaid across the face thereof, knowing the consideration of such instrument to have consisted, in whole or in part, of the purchase money of a patent right, or a partial interest, limited geographically or otherwise, in a patent right, is guilty of a misdemeanor, and liable to imprisonment for any term not exceeding one year, or to such fine, not exceeding two hundred dollars, as the court thinks fit.] (R. S. C. ch. 123, sec. 14.)

Sub-sections 3, 4, 5 and 6 are not to be found in the Imperial Act but as they already formed part of our law, they were incorporated in this act by Parliament, for greater convenience.

Negotiation of Bills.

Negotiation of bills.

31. A bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill :

"Holder" defined by sec. 2, (g) *ante*.

2. A bill payable to bearer is negotiated ^{To bearer.} by delivery :

“Bearer” and “delivery” defined by sec. 2, (d) (f).

3. A bill payable to order is negotiated ^{To order.} by the indorsement of the holder completed by delivery :

4. Where the holder of a bill payable to his ^{Without in-} order transfers it for value without indorsing ^{dorsement.} it, the transfer gives the transferee such title as the transferer had in the bill, and the transferee in addition acquires the right to have the indorsement of the transferer :

5. Where any person is under obligation to ^{Personal lia-} indorse a bill in a representative capacity, he ^{bility may be} may indorse the bill in such terms as to ^{avoided.} negative personal liability. (45-46 Vict. ch. 61, sec. 31, Imp. Act.)

See sec. 16, (a) *ante* as to such indorsements.

32. An indorsement in order to operate as ^{Requisites of} a negotiation must comply with the following ^{a valid indor-} conditions, namely :—
^{sement.}

(a.) It must be written on the bill itself and be signed by the indorser. The simple signature of the indorser on the bill, without additional words, is sufficient ;

An indorsement on the face of a Bill is valid. *Young v. Glover* (1857) 2 Jur. N. S. Q. R. 637.

Indorsement is only completed by delivery.

An indorsement written on an allonge, or ^{Allonge.} on a “copy” of a bill issued or negotiated in a country where “copies” are recognized, is deemed to be written on the bill itself ;

Allonge. A paper annexed to a Bill of Exchange or a Promissory Note, on which indorsements for which there was not space on the instrument, are written. *Story*, B. of E. sec. 204, 218.

(b.) It must be an indorsement of the entire bill. A partial indorsement, that is to say, an indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the bill to two or more indorsees severally, does not operate as a negotiation of the bill ;

(c.) Where a bill is payable to the order of two or more payees or indorsees who are not partners, all must indorse, unless the one indorsing has authority to indorse for the others ;

Misspelling.

2. Where, in a bill payable to order, the payee or indorsee is wrongly designated, or his name is misspelt, he may indorse the bill as therein described, adding his proper signature ; or he may endorse by his own proper signature :

A question sometimes arises as to how a bill payable (say) to " Mrs. John Jones " should be indorsed. The proper form appears to be " Ellen Jones, wife of John Jones " although many bankers insist upon *ipsissima verba et literæ*.

Order of indorsement.

3. Where there are two or more indorsements on a bill, each indorsement is deemed to have been made in the order in which it appears on the bill, until the contrary is proved :

Special indorsement.

4. An indorsement may be made in blank or special. It may also contain terms making it restrictive. (*Ibid. sec. 32.*)

Conditional indorsement.

33. *Where a bill purports to be indorsed conditionally, the condition may be disregarded by the payer, and payment to the indorsee is valid, whether the condition has been fulfilled or not. (Ibid. sec. 33.)*

This section alters the law. It was formerly held that if a bill was indorsed conditionally, the ac-

ceptor paid it at his peril if the condition was not fulfilled. Even although it might be impossible for him to ascertain whether the condition was fulfilled or not. *Robertson v Kensington* (4 Taunton 35.)

34. An indorsement in blank specifies no indorsee, and a bill so indorsed becomes payable to bearer : Indorsement in blank.

2. A special indorsement specifies the person to whom, or to whose order, the bill is to be payable : Special indorsement.

3. The provisions of this Act relating to a payee apply, with the necessary modifications, to an indorsee under a special indorsement : Application of Act to indorsee.

4. Where a bill has been indorsed in blank, any holder may convert the blank indorsement into a special indorsement by writing above the indorser's signature a direction to pay the bill to or to the order of himself or some other person. (*Ibid. sec. 34.*) Conversion of blank indorsement.

The holder may at any time, strike out any indorsement which is not necessary to his title. The indorser whose signature is *intentionally* struck out and all indorsers subsequent to him, are discharged from liability. Otherwise, if the signature is struck out by mistake. *Chalmers. 101.*

35. An indorsement is restrictive which prohibits the further negotiation of the bill, or which expresses that it is a mere authority to deal with the bill as thereby directed, and not a transfer of the ownership thereof, as, for example, if a bill is indorsed "Pay D only," or "Pay D for the account of X," or "Pay D, or order, for collection : " Restrictive indorsement.

2. A restrictive indorsement gives the indorsee the right to receive payment of the bill and to sue any party thereto that his indorser could have sued, but gives him no power to transfer his rights as indorsee unless it expressly authorizes him to do so : Right of indorsee thereunder.

If further transfer is authorized.

3. Where a restrictive indorsement authorizes further transfer, all subsequent indorsees take the bill with the same rights and subject to the same liabilities as the first indorsee under the restrictive indorsement. (*Ibid. sec. 35.*)

When negotiable bill ceases to be so.

36. Where a bill is negotiable in its origin, it continues to be negotiable until it has been (a) restrictively indorsed, or (b) discharged by payment or otherwise :

Negotiation of overdue bill.

2. Where an overdue bill is negotiated, it can be negotiated only subject to any defect of title affecting it at its maturity, and thenceforward no person who takes it can acquire or give a better title than that which had the person from whom he took it :

When bill deemed overdue.

3. A bill payable on demand is deemed to be overdue within the meaning and for the purposes of this section, when it appears on the face of it to have been in circulation for an unreasonable length of time ; what is an unreasonable length of time for this purpose is a question of fact :

By sec. 85, notes payable on demand are exempted from this section, but by sec. 72, this provision applies to cheques.

Presumption as to negotiation.

4. Except where an indorsement bears date after the maturity of the bill, every negotiation is *prima facie* deemed to have been effected before the bill was overdue :

Taking bill subsequent to dishonor.

5. Where a bill which is not overdue has been dishonored, any person who takes it with notice of the dishonor takes it subject to any defect of title attaching thereto at the time of dishonor ; but nothing in this sub-section shall affect the rights of a holder in due course. (*Ibid. sec. 36.*)

The expression "defect of title" corresponds to the equivalent "liabilities and objections" mentioned in article 2287 of the Civil Code, and to the phrase "equity attaching to the bill" known to English law.

In the province of Quebec actions upon inland Bills of Exchange and Promissory Notes, are prescribed by five years. CIVIL CODE ART. 2260.

No indorsement or memorandum of any payment upon a Promissory Note, Bill of Exchange or other writing, made by or on behalf of the party to whom such payment is made, is received in proof of such payment so as to take the debt out of the operation of the law respecting the limitation of actions. CIVIL CODE ART. 1229.

37. Where a bill is negotiated back to the drawer, or to a prior indorser, or to the acceptor, such party may, subject to the provisions of this Act, re-issue and further negotiate the bill, but he is not entitled to enforce the payment of the bill against any intervening party to whom he was previously liable. (*Ibid. sec. 37.*)

Negotiation of bill to party already liable thereon.

38. The rights and powers of the holder of a bill are as follows:—

Rights of the holder.

(a.) He may sue on the bill in his own name;

(b.) Where he is a holder in due course, he holds the bill free from any defect of title of prior parties, as well as from mere personal defences available to prior parties among themselves, and may enforce payment against all parties liable on the bill;

(c.) Where his title is defective, (1) if he negotiates the bill to a holder in due course, that holder obtains a good and complete title to the bill, and (2) if he obtains payment of the bill the person who pays him in due course gets a valid discharge for the bill. (*Ibid. sec. 38.*)

The Hon. Judge Chalmers has suggested the following rules of law as to the holder's rights of action. Rule 1. The holder of a bill is entitled to maintain an action thereon in his own name against all or any of the parties liable thereon, unless it is shown that he holds the bill adversely to the true owner.

It is immaterial that the holder never had any interest in the bill, or that he has parted with his interest therein.

When the holder of a bill sues as agent for another person or when he sues wholly or in part for the benefit of another person, any defence or set off available against that person is available *pro tanto* against the holder.

Rule 2. When a bill is payable to a particular person or persons or to his or their order, an action thereon must be brought in the name of such person or persons.

Rule 3. Subject to Rule 1. When a bill is payable to bearer, an action thereon may be brought in the name of any person who has either the actual or the constructive possession thereof; and constructive possession jointly with others, is sufficient to entitle the possessor to sue alone.

General Duties of the Holder.

When presentment for acceptance is necessary.

Express stipulation as to presentment.

No presentment in any other case.

Necessary delay in presentment.

39. Where a bill is payable at sight or after sight, presentment for acceptance is necessary in order to fix the maturity of the instrument.

2. Where a bill expressly stipulates that it shall be presented for acceptance, or where a bill is drawn payable elsewhere than at the residence or place of business of the drawee, it must be presented for acceptance before it can be presented for payment :

3. In no other case is presentment for acceptance necessary in order to render liable any party to the bill :

4. *Where the holder of a bill drawn payable elsewhere than at the place of business or residence of the drawee, has not time, with the exercise of*

reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawer and indorsers. (*Ibid.* sec. 39.)

This settles a moot point.

A Bill drawn in America on England reaches England on the very day of maturity. It may be payable in London although received at Liverpool. This section relieves the holder in such a case.

40. Subject to the provisions of this Act, when a bill payable after sight is negotiated, the holder must either present it for acceptance or negotiate it within a reasonable time : Time for presenting bill payable after sight.

2. If he does not do so, the drawer and all indorsers prior to that holder are discharged : If not presented.

3. In determining what is a reasonable time within the meaning of this section, regard shall be had to the nature of the bill, the usage of trade with respect to similar bills, and the facts of the particular case. (*Ibid.* sec. 40.) As to reasonable time.

Reasonable time is a mixed question of law and fact, and in determining it regard must be had to the interests of the holder as well as to the interests of the drawers and endorers.

Ranchurn Mullick v. Radakissen, Moore, P. C. 46.

41. A bill is duly presented for acceptance which is presented in accordance with the following rules : Rules as to presentment for acceptance.

(a.) The presentment must be made by or on behalf of the holder to the drawee or to some person authorized to accept or refuse acceptance on his behalf, at a reasonable hour on a business day and before the bill is over-due ;

The holder is not necessarily the lawful holder. *Morrison v. Buchanan, 6 C. & P. 18.*

The holder need not present the bill in person. *Nouguier* § 462.

Reasonable hour in the case of a trader means business hours, and banking hours in the case of a banker.

(b.) Where a bill is addressed to two or more drawees, who are not partners, presentment must be made to them all, unless one has authority to accept for all, when presentment may be made to him only ;

Compare this sub-section with sec. 4 et sec. 19. Judge Chalmers points out that a difficulty may arise if one of the drawees refuses to accept. There would in such a case be a qualified acceptance and the holder might treat the bill as dishonored. See Sec. 44 *post*.

(c.) Where the drawee is dead, presentment may be made to his personal representative ;

Heretofore the law on this point was very doubtful. Now the holder has an option ; See sec. 2 (a) *post*.

(d.) Where authorized by agreement or usage, a presentment through the post office is sufficient :

Excuses for
non-present-
ment.

2. Presentment in accordance with these rules is excused, and a bill may be treated as dishonored by non-acceptance—

(a.) Where the drawee is dead or bankrupt, or is a fictitious person or person not having capacity to contract by bill ;

(b.) Where, after the exercise of reasonable diligence, such presentment cannot be effected ;

(c.) Where, although the presentment has been irregular, acceptance has been refused on some other ground :

When there is
no excuse.

3. The fact that the holder has reason to believe that the bill, on presentment, will be dishonored does not excuse presentment. (*Ibid.* sec. 41.)

A bill should be presented for payment where the money is. Any one can then hand over the money. A bill should be presented for acceptance to the drawee himself, for he has to write the acceptance. Again (except in the case of demand drafts) the day of payment is fixed ; but not so the day for acceptance. These considerations are material as to whether the holder has used due diligence to effect presentment.

42. When a bill is duly presented for acceptance and is not accepted on the day of presentment or within two days thereafter, the person presenting it must treat it as dishonored by non-acceptance. If he does not, the holder shall lose his right of recourse against the drawer and indorsers. (*Ibid.* sec. 42.)

Three days are thus given for acceptance.

43. A bill is dishonored by non-acceptance—
(a.) When it is duly presented for acceptance, and such an acceptance as is prescribed by this Act is refused or cannot be obtained ; or—

(b.) When presentment for acceptance is excused and the bill is not accepted :

2. Subject to the provisions of this Act, when a bill is dishonored by non-acceptance an immediate right of recourse against the drawer and indorsers accrues to the holder, and no presentment for payment is necessary. (*Ibid.* sec. 43.)

See sec. 17 and 19 for the essentials of a valid acceptance.

See sec. 41 as to presentment for acceptance and as to excuses for non-payment for acceptance.

For the provisions referred to in sub-sec. 2, see sec. 65 *post*. "Right of recourse" is to be distinguished from "right of action." The latter right does not exist until the necessary notices of dishonour and protest are given.

As to qualified acceptances.

44. The holder of a bill may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance may treat the bill as dishonored by non-acceptance :

As to qualified acceptances, see sec. 19 *ante*.

If taken without authority.

2. Where a qualified acceptance is taken, and the drawer or an indorser has not expressly or impliedly authorized the holder to take a qualified acceptance, or does not subsequently assent thereto, such drawer or indorser is discharged from his liability on the bill ;

Partial acceptance.

The provisions of this sub-section do not apply to a partial acceptance, whereof due notice has been given. Where a foreign bill has been accepted as to part, it must be protested as to the balance :

What shall be deemed assent.

3. When the drawer or indorser of a bill receives notice of a qualified acceptance, and does not within a reasonable time express his dissent to the holder, he shall be deemed to have assented thereto. (*Ibid.* sec. 44.)

Presentment for payment.

45. Subject to the provisions of this Act, a bill must be duly presented for payment. If it is not so presented, the drawer and indorsers shall be discharged :

For the provisions referred to see sec. 46 *post.* and sec. 39 *ante*.

A drawer or indorser who is discharged from his liability on the bill is also discharged from his liability on the consideration therefor. (*Peacock v. Pursell*, 32 L. J. C. P. 266.)

Rules as to presentment.

2. A bill is duly presented for payment which is presented in accordance with the following rules :—

(a.) Where the bill is not payable on demand, presentment must be made on the day it falls due ;

(b.) Where the bill is payable on demand, then, subject to the provisions of this Act, presentment must be made within a reasonable time after its issue, in order to render the drawer liable, and within a reasonable time after its indorsement, in order to render the indorser liable ;

In determining what is a reasonable time, regard shall be had to the nature of the bill, the usage of trade with regard to similar bills, and the facts of the particular case ;

(c.) Presentment must be made by the holder or by some person authorized to receive payment on his behalf, at the proper place, as hereinafter defined, either to the person designated by the bill as payer or to his representative or some person authorized to pay or refuse payment on his behalf, if, with the exercise of reasonable diligence, such person can there be found ;

(d.) A bill is presented at the proper place :—

(1.) Where a place of payment is specified in the bill or acceptance, and the bill is there presented ; (2.) Where no place of payment is specified, but the address of the drawee or acceptor is given in the bill, and the bill is there presented ; (3.) Where no place of payment is specified and no address given, and the bill is presented at the drawee's or acceptor's place of business, if known, and if not, at his ordinary residence, if known ; (4.) In any other case, if presented to the drawee or acceptor wherever he can be found, or if presented at his last known place of business or residence ;

3. Where a bill is presented at the proper

place, and, after the exercise of reasonable diligence, no person authorized to pay or refuse payment can be found there, no further presentment to the drawee or acceptor is required :

4. Where a bill is drawn upon, or accepted by two or more persons who are not partners, and no place of payment is specified, presentment must be made to them all : (*Ibid. sec. 45.*)

[5. Where the drawee or acceptor of a bill is dead, and no place of payment is specified, presentment must be made to a personal representative, if such there is and, with the exercise of reasonable diligence, he can be found :]

6. Where authorized by agreement or usage, a presentment through the post office is sufficient : (*Ibid. sec. 45.*)

This gives effect to a well established custom in England and the United States.

[7. Where the place of payment specified in the bill or acceptance is any city, town or village, and no place therein is specified, and the bill is presented at the drawee's or acceptor's known place of business or known ordinary residence therein, and, if there is no such place of business or residence, the bill is presented at the post office, or principal post office in such city, town or village, such presentment is sufficient.]

Excuse for
delay in pre-
sentment for
payment.

46. Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases

to operate, presentment must be made with reasonable diligence :

See Pothier No. 114. Story, sec. 327.

Very sudden death of holder ; war, a siege, etc., might excuse such delay. See *Chalmers*, 137.

2. Presentment for payment is dispensed with— When such presentment is dispensed with.

(a.) Where, after the exercise of reasonable diligence, presentment, as required by this Act, cannot be affected ;

The fact that the holder has reason to believe that the bill will, on presentment, be dishonored, does not dispense with the necessity for presentment ;

(b.) Where the drawee is a fictitious person ;

(c.) As regards the drawer, where the drawee or acceptor is not bound, as between himself and the drawer, to accept or pay the bill, and the drawer has no reason to believe that the bill would be paid if presented ;

(d.) As regards an indorser, where the bill was accepted or made for the accommodation of that indorser, and he has no reason to expect that the bill would be paid if presented ;

(e.) By waiver of presentment, express or implied. (*Ibid.* sec. 46.)

47. A bill is dishonored by non-payment Dishonor by non-payment.

(a) when it is duly presented for payment and payment is refused or cannot be obtained, or

(b) when presentment is excused and the bill is overdue and unpaid ;

2. Subject to the provisions of this Act, Recourse in such case. when a bill is dishonored by non-payment, an immediate right of recourse against the drawer, acceptor and indorsers accrues to the holder. (*Ibid.* sec. 47.)

Notice of dishonor and effect of non-notice.

48. Subject to the provisions of this Act, when a bill has been dishonored by non-acceptance or by non-payment, notice of dishonor must be given to the drawer and each indorser, and any drawer or indorser to whom such notice is not given is discharged ; Provided that—

(a.) Where a bill is dishonored by non-acceptance, and notice of dishonor is not given, the rights of a holder in due course subsequent to the omission shall not be prejudiced by the omission ;

(b.) Where a bill is dishonored by non-acceptance and due notice of dishonor is given, it shall not be necessary to give notice of a subsequent dishonor by non-payment, unless the bill shall in the meantime have been accepted. (*Ibid. sec. 48.*)

Rules as to notice of dishonor.

49. Notice of dishonor, in order to be valid and effectual, must be given in accordance with the following rules :—

(a.) The notice must be given by or on behalf of the holder, or by or on behalf of an indorser who, at the time of giving it, is himself liable on the bill ;

(b.) Notice of dishonor may be given by an agent either in his own name, or in the name of any party entitled to give notice, whether that party is his principal or not ;

(c.) Where the notice is given by or on behalf of the holder, it enures for the benefit of all subsequent holders and all prior indorsers who have a right of recourse against the party to whom it is given ;

(d.) Where notice is given by or on behalf of an indorser entitled to give notice as hereinbefore provided, it enures for the benefit of

the holder and all indorsers subsequent to the party to whom notice is given ;

(*e.*) The notice may be given in writing or by personal communication, and may be given in any terms which sufficiently identify the bill and intimate that the bill has been dishonored by non-acceptance or non-payment ;

(*f.*) The return of a dishonored bill to the drawer or an indorser is, in point of form, deemed a sufficient notice of dishonor ;

(*g.*) A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the bill shall not vitiate the notice, unless the party to whom the notice is given is in fact misled thereby ;

(*h.*) Where notice of dishonor is required to be given to any person, it may be given either to the party himself, or to his agent in that behalf ;

(*i.*) Where the drawer or indorser is dead, and the party giving notice knows it, the notice must be given to a personal representative, if such there is and, with the exercise of reasonable diligence, he can be found ;

(*j.*) Where there are two or more drawers or indorsers who are not partners, notice must be given to each of them, unless one of them has authority to receive such notice for the others ;

(*k.*) The notice may be given as soon as the bill is dishonored, and must be given not later than the next following juridical or business day :

2. Where a bill, when dishonored, is in the hands of an agent, he may either himself give notice to the parties liable on the bill, or he may give notice to his principal. If he gives notice to his principal, he must do so within

If dishonored
bill is in
hands of an
agent.

the same time as if he were the holder, and the principal, upon receipt of such notice, has himself the same time for giving notice as if the agent had been an independent holder :

Notice to antecedent parties.

3. Where a party to a bill receives due notice of dishonor, he has, after the receipt of such notice, the same period of time for giving notice to antecedent parties that the holder has after the dishonor : (*Ibid. sec. 48.*)

When notice shall be given.

[4. Notice of the protest or dishonor of any bill payable in Canada shall, notwithstanding anything in this section contained, be sufficiently given if it is addressed in due time to any party to such bill entitled to such notice, at his customary address or place of residence or at the place at which such bill is dated, unless any such party has, under his signature, designated another place ; and in such latter case such notice shall be sufficiently given if addressed to him in due time at such other place ; and such notice so addressed shall be sufficient, although the place of residence of such party is other than either of such above-mentioned places ; and such notice shall be deemed to have been duly served and given for all purposes if it is deposited in any post office, with the postage paid thereon, at any time during the day on which such protest or presentment has been made, or on the next following juridical or business day ; such notice shall not be invalid by reason of the fact that the party to whom it is addressed is dead :]

Miscarriage in post service.

5. Where a notice of dishonor is duly addressed and posted, as above provided, the sender is deemed to have given due notice of dishonor, notwithstanding any miscarriage by the post office. (*Ibid. sec. 49.*)

Excuses for non-notice and delay.

50. Delay in giving notice of dishonor is excused where the delay is caused by circum-

stances beyond the control of the party giving notice, and not imputable to his default, misconduct, or negligence: when the cause of delay ceases to operate the notice must be given with reasonable diligence:

Compare sec. 46, note.

If an indorser gives a wrong address, delay caused by his so doing would be excused; and if the holder does not know an indorser's address, delay occupied in making enquiries would be excused; so too by sec. 49 (15) delay caused by the default of the post office is excused. See Chalmers, p. 153.

2. Notice of dishonor is dispensed with—

When notice
is dispensed
with.

(a.) When, after the exercise of reasonable diligence, notice as required by this Act cannot be given to or does not reach the drawer or indorser sought to be charged;

(b.) By waiver express or implied: notice of dishonor may be waived before the time of giving notice has arrived, or after the omission to give due notice;

(c.) As regards the drawer, in the following cases, namely, (1) where drawer and drawee are the same person, (2) where the drawee is a fictitious person or a person not having capacity to contract, (3) where the drawer is the person to whom the bill is presented for payment, (4) where the drawee or acceptor is, as between himself and the drawer, under no obligation to accept or pay the bill, (5) where the drawer has countermanded payment;

(d.) As regards the indorser, in the following cases, namely, (1) where the drawee is a fictitious person or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the bill, (2) where the indorser is the person to whom the bill is presented for payment, (3) where the

bill was accepted or made for his accommodation. (*Ibid.* sec. 50.)

Noting or protest of bill.

51. Where an inland bill has been dishonored it may, if the holder thinks fit, be noted and protested for non-acceptance or non-payment, as the case may be; [but, subject to the provisions of this Act with respect to notice of dishonor, it shall not, except in the Province of Quebec, be necessary to note or protest any such bill in order to preserve the recourse against the drawer or indorser; but in the case of a bill drawn upon any person in the Province of Quebec, or payable or accepted at any place therein, in default of protest for non-acceptance or non-payment, as the case may be, and of notice thereof, the parties liable on the bill other than the acceptor are discharged, subject, nevertheless, to the exceptions in this section hereinafter contained :

(2) By "noting" is meant the minute made by a notary public on a dishonored Bill at the time of its dishonor. The formal notarial certificate, or protest, attesting the dishonor of the Bill is based upon the noting.

By sec. 73 this provision applies to Cheques and by sec. 89 to Promissory Notes.

Protest of foreign bill.

2. Where a foreign bill, appearing on the face of it to be such, has been dishonored by non-acceptance, it must be duly protested for non-acceptance, (3) and where such a bill, which has not been previously dishonored by non-acceptance, is dishonored by non-payment, it must be duly protested for non-payment. If it is not so protested, the drawer and indorsers are discharged. Where a bill does not appear on the face of it to be a foreign bill, protest thereof in case of dishonor, except as in this section provided, is unnecessary :

(3) Protest of a foreign Promissory Note is not required. See sec. 89 *post*.

3. A bill which has been protested for non-acceptance, or a bill of which protest for non-acceptance has been waived, may be subsequently protested for non-payment : Subsequent protest.

4. Subject to the provisions of this Act, when a bill is protested the protest must be made or noted on the day of its dishonour. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting : Time for noting.

For the provisions referred to, see sub-sec. 6 (a) and sub-sec. 9 and sec. 93 *post*.

5. *Where the acceptor of a bill becomes bankrupt or suspends payment before it matures, the holder may cause the bill to be protested for better security against the drawer and indorsers :* If acceptor is insolvent.

The protest for better security is new to our law. A bill so protested may be accepted *supra* protest for honor. See sec. 65.

6 A bill must be protested at the place where it is dishonored, or at some other place in Canada situate within five miles of the place of presentment and dishonor of such bill : Provided that— Where bill must be protested.

(a.) When a bill is presented through the post office, and returned by post dishonored, it may be protested at the place to which it is returned, not later than on the day of its return or the next juridical day ;

(b.) *Every protest for dishonor, either for non-acceptance or non-payment, may be made on the day of such dishonor at any time after non-acceptance, or in case of non-payment, at any time after three o'clock in the afternoon :*

What protest
shall set forth.

7. A protest must contain a copy of the bill, or the original bill may be annexed thereto, and the protest must be signed by the notary making it, and must specify—

(a.) The person at whose request the bill is protested ;

(b.) The place and date of protest, the cause or reason for protesting the bill, the demand made, and the answer given, if any, or the fact that the drawee or acceptor could not be found :

If bill is lost,
&c.

8. Where a bill is lost or destroyed, or is wrongly or accidentally detained from the person entitled to hold it, or is accidentally retained in a place other than where payable, protest may be made on a copy or written particulars thereof :

Excuses for
non-protest
and delay.

9. Protest is dispensed with by any circumstances which would dispense with notice of dishonor. Delay in noting or protesting is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, this bill must be noted or protested with reasonable diligence. (*Ibid. sec. 51.*)

Officer of Bank
not to act as
notary.

[10. *No clerk, teller or agent of any bank shall act as a notary in the protesting of any bill or note payable at the bank or at any of the branches of the bank in which he is employed.*]

Sub-section 10 is not so applicable to the province of Quebec, as to the other provinces where the notarial profession does not exist as it does in the province of Quebec.

Liability of
acceptor as to
presentment.

52. When no place of payment is specified in the bill or acceptance, presentment for payment is not necessary in order to render the acceptor liable :

2. When a place of payment is specified in the bill or acceptance, the acceptor, in the absence of an express stipulation to that effect, is not discharged by the omission to present the bill for payment on the day that it matures, [but if any suit or action be instituted thereon before presentation the costs thereof shall be in the discretion of the court :]

3. In order to render the acceptor of a bill liable, it is not necessary to protest it, or that notice of dishonor should be given to him: No protest or notice necessary.

4. Where the holder of a bill presents it for payment, he shall exhibit the bill to the person from whom he demands payment, and when a bill is paid the holder shall forthwith deliver it up to the party paying it. Presentment for payment.
(*Ibid. sec. 52.*)

Liabilities of Parties.

53. A bill, of itself, does not operate as an assignment of funds in the hands of the drawee available for the payment thereof, and the drawee of a bill who does not accept as required by this Act is not liable on the instrument. (*Ibid. sec. 53.*) Funds in hands of drawer.

54. The acceptor of a bill, by accepting it— Liability of acceptor.

(a.) Engages that he will pay it according to the tenor of his acceptance ;

(b.) Is precluded from denying to a holder in due course—

(1) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the bill :

(2.) In the case of a bill payable to drawer's order, the then capacity of the drawer to indorse, but not the genuineness or validity of his indorsement;

(3.) In the case of a bill payable to the order of a third person, the existence of the payee and his then capacity to indorse, but not the genuineness or validity of his indorsement. (*Ibid. sec. 54.*)

Liability of
drawer.

55. The drawer of a bill, by drawing it—

(a.) Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it is dishonored he will compensate the holder or any indorser who is compelled to pay it, provided that the requisite proceedings on dishonor are duly taken ;

(b.) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse :

Liability of
indorser.

2. The indorser of a bill, by indorsing it—

(a.) Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it is dishonored he will compensate the holder or a subsequent indorser who is compelled to pay it, provided that the requisite proceedings on dishonor are duly taken ;

(b.) Is precluded from denying to a holder in due course the genuineness and regularity in all respects of the drawer's signature and all previous indorsements ;

(c.) Is precluded from denying to his immediate or a subsequent indorsee that the bill was, at the time of his indorsement, a valid and subsisting bill, and that he had then a good title thereto. (*Ibid. sec. 55.*)

Stranger signing bill liable as indorser.

56. Where a person signs a bill otherwise than as a drawer or acceptor, he thereby incurs the liabilities of an indorser to a holder in due course, [and is subject to all the provisions of this Act respecting indorsers.] (*Ibid. sec. 56.*)

57. Where a bill is dishonored, the measure of damages which shall be deemed to be liquidated damages, shall be as follows :—

Measure of damages against parties to dishonored bill.

(a.) The holder may recover from any party liable on the bill, the drawer who has been compelled to pay the bill may recover from the acceptor, and an indorser who has been compelled to pay the bill may recover from the acceptor or from the drawer, or from a prior indorser—

(1.) The amount of the bill ;

(2.) Interest thereon from the time of presentment for payment, if the bill is payable on demand, and from the maturity of the bill in any other case ;

(3.) The expenses of noting and protest ;

(b.) In the case of a bill which has been dishonored abroad, in addition to the above damages, the holder may recover from the drawer or any indorser, and the drawer or an indorser who has been compelled to pay the bill may recover from any party liable to him, the amount of the re-exchange with interest thereon until the time of payment. (*Ibid. sec. 57.*)

The provisions as to damages on foreign extra-provincial bills contained in article 2336 of the Civil Code and the Dominion Act 38 Vic., ch. 19 have not been re-enacted.

58. Where the holder of a bill payable to bearer negotiates it by delivery without indorsing it, he is called a “transferrer by delivery :”

Transferrer by delivery.

2. A transferrer by delivery is not liable on the instrument :

Liability.

3. A transferrer by delivery who negotiates a bill thereby warrants to his immediate transferee, being a holder for value, that the bill is

Warranty.

what it purports to be, that he has a right to transfer it, and that at the time of transfer he is not aware of any fact which renders it valueless. (*Ibid. sec. 58.*)

Discharge of Bill.

Discharge by payment.

59. A bill is discharged by payment in due course by or on behalf of the drawee or acceptor :

Payment in due course.

“Payment in due course” means payment made at or after the maturity of the bill to the holder thereof in good faith and without notice that his title to the bill is defective :

Payment by drawer or indorser ; its effect.

2. Subject to the provisions hereinafter contained, when a bill is paid by the drawer or an indorser, it is not discharged ; but—

(a.) Where a bill payable to, or to the order of, a third party is paid by the drawer, the drawer may enforce payment thereof against the acceptor, but may not re-issue the bill ;

(b.) Where a bill is paid by an indorser, or where a bill payable to drawer’s order is paid by the drawer, the party paying it is remitted to his former rights as regards the acceptor or antecedent parties, and he may, if he thinks fit, strike out his own and subsequent indorsements, and again negotiate the bill :

Accommodation bill.

3. Where an accommodation bill is paid in due course by the party accommodated, the bill is discharged. (*Ibid. sec. 59.*)

Acceptor the holder at maturity.

60. When the acceptor of a bill is or becomes the holder of it at or after its maturity, in his own right, the bill is discharged. (*Ibid. sec. 61.*)

Express waiver.

61. When the holder of a bill at or after its maturity absolutely and unconditionally re-

nounces his rights against the acceptor, the bill is discharged: the renunciation must be in writing, unless the bill is delivered up to the acceptor:

2. The liabilities of any party to a bill may ^{The same.} in like manner be renounced by the holder before, at or after its maturity; but nothing in this section shall affect the rights of a holder in due course without notice of renunciation. (*Ibid.* sec. 62.)

62. Where a bill is intentionally cancelled ^{Cancellation of bill.} by the holder or his agent, and the cancellation is apparent thereon, the bill is discharged:

2. In like manner, any party liable on a bill may be discharged by the intentional cancellation of his signature by the holder or his agent. In such case, any indorser who would have had a right of recourse against the party whose signature is cancelled is also discharged: ^{Of any signature.}

3. A cancellation made unintentionally, or ^{Erroneous cancellation.} under a mistake, or without the authority of the holder, is inoperative; but where a bill or any signature thereon appears to have been cancelled, the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake, or without authority. (*Ibid.* sec. 63.)

63. Where a bill or acceptance is materially ^{Alteration of bill.} altered without the assent of all parties liable on the bill, the bill is voided, except as against a party who has himself made, authorized, or assented to the alteration, and subsequent indorsers:

Provided, that where a bill has been materially altered, but the alteration is not apparent, and the bill is in the hands of a holder in due course, such holder may avail him- ^{Proviso.}

self of the bill as if it had not been altered, and may enforce payment of it according to its original tenor :

The expression "holder in due course" is defined by section 29 *ante*.

What are material alterations.

2. In particular, the following alterations are material, namely, any alteration of the date, the sum payable, the time of payment, the place of payment, and where a bill has been accepted generally, the addition of a place of payment without the acceptor's assent. (*Ibid. sec. 64.*)

Acceptance and Payment for Honor.

Acceptance for honor *supra* protest.

64. Where a bill of exchange has been protested for dishonor by non-acceptance, or protested for better security, and is not overdue, any person, not being a party already liable thereon, may, with the consent of the holder, intervene and accept the bill *supra* protest, for the honor of any party liable thereon, or for the honor of the person for whose account the bill is drawn :

In part.

2. A bill may be accepted for honor for part only of the sum for which it is drawn :

Requirements for validity.

3. An acceptance for honor *supra* protest, in order to be valid, must—

(a.) Be written on the bill, and indicate that it is an acceptance for honor ;

(b.) Be signed by the acceptor for honor :

For whose honor.

4. Where an acceptance for honor does not expressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer :

Computation of time.

5. Where a bill payable after sight is accepted for honor, its maturity is calculated from the date of protesting for non-acceptance,

and not from the date of the acceptance for honor. (*Ibid. sec. 65.*)

65. The acceptor for honor of a bill by accepting it engages that he will, on due presentment, pay the bill according to the tenor of his acceptance, if it is not paid by the drawee, provided it has been duly presented for payment and protested for non-payment, and that he receives notice of these facts :

Liability of acceptor for honor.

2. The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted. (*Ibid. sec. 66.*)

To what parties.

66. Where a dishonored bill has been accepted for honor *supra* protest, or contains a reference in case of deed, it must be protested for non-payment before it is presented for payment to the acceptor for honor, or referee in case of need :

Presentment to acceptor for honor.

2. Where the address of the acceptor for honor is in the same place where the bill is protested for non-payment, the bill must be presented to him not later than the day following its maturity ; and where the address of the acceptor for honor is in some place other than the place where it was protested for non-payment, the bill must be forwarded not later than the day following its maturity for presentment to him :

Time for presentment.

3. Delay in presentment or non-presentment is excused by any circumstance which would excuse delay in presentment for payment or non-presentment for payment :

Excuses for non-presentment or delay.

4. When a bill of exchange is dishonored by the acceptor for honor, it must be protested for non-payment by him. (*Ibid. sec. 67.*)

Protest for non-payment.

Payment for
honor *supra*
protest.

67. Where a bill has been protested for non-payment, any person may intervene and pay it *supra* protest for the honor of any party liable thereon, or for the honor of the person for whose account the bill is drawn :

If more than
one offer to
pay.

2. Where two or more persons offer to pay a bill for the honor of different parties, the person whose payment will discharge most parties to the bill shall have the preference :

Attestation.

3. Payment for honor *supra* protest, in order to operate as such and not as a mere voluntary payment, must be attested by a notarial act of honor, which may be appended to the protest or form an extension of it :

Basis thereof.

4. The notarial act of honor must be founded on a declaration made by the payer for honor, or his agent in that behalf, declaring his intention to pay the bill for honor, and for whose honor he pays :

Liabilities
and rights in
such case.

5. Where a bill has been paid for honor, all parties subsequent to the party for whose honor it is paid are discharged, but the payer for honor is subrogated for and succeeds to both the rights and duties of the holder as regards the party for whose honor he pays, and all parties liable to that party :

Delivery to
payer for
honor.

6. The payer for honor, on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonor, is entitled to receive both the bill itself and the protest. If the holder does not on demand deliver them up, he shall be liable to the payer for honor in damages :

Effect of re-
fusal to re-
ceive pay-
ment.

7. Where the holder of a bill refuses to receive payment *supra* protest, he shall lose his right of recourse against any party who would have been discharged by such payment. (*Ibid. sec. 68.*)

Lost Instruments.

68. Where a bill has been lost before it is overdue, the person who was holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer, if required, to indemnify him against all persons whatever, in case the bill alleged to have been lost shall be found again: Holder's right to duplicate of lost bill.

2. If the drawer, on request as aforesaid, refuses to give such duplicate bill, he may be compelled to do so. *(Ibid. sec. 69.)* If refused.

Presumably, if the drawer, on tender of indemnity, declined to give a new bill, an action would lie to compel him, and damages might be claimed in the alternative. *Chalmers*, 216.

It will be observed that there is no provision for obtaining a second indorsement and acceptance. Compare art. 2316 Civil Code.

69. In any action or proceeding upon a bill, the court or a judge may order that the loss of the instrument shall not be set up, provided an indemnity is given to the satisfaction of the court or judge against the claims of any other person upon the instrument in question. *(Ibid. sec. 70.)* Action on lost bill.

Bill in a Set.

70. Where a bill is drawn in a set, each part of a set being numbered, and containing a reference to the other parts, the whole of the parts constitute one bill; As to bills in sets.

2. Where the holder of a set indorses two or more parts to different persons, he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed as if the said parts were separate bills: If indorsed to different persons.

If negotiated
to different
holders.

3. Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is, as between such holders, deemed the true owner of the bill; but nothing in this sub-section shall affect the rights of a person who in due course accepts or pays the part first presented to him:

Acceptance.

4. The acceptance may be written on any part, and it must be written on one part only:

If more than
one part is ac-
cepted.

5. If the drawee accepts more than one part, and such accepted parts get into the hands of different holders in due course, he is liable on every such part as if it were a separate bill:

Payment
without deli-
very of proper
part.

6. When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereof:

Discharge.

7. Subject to the preceding rules, where any one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged. (*Ibid. sec. 71.*)

Conflict of Laws.

Rules where
laws conflict.

71. Where a bill drawn in one country is negotiated, accepted or payable in another, the rights, duties and liabilities of the parties thereto are determined as follows:—

Validity, how
determined.

(a.) The validity of a bill as regards requisites in form is determined by the law of the place of issue, and the validity as regards requisites in form of the supervening contracts, such as acceptance, or indorsement, or acceptance *supra* protest, is determined by the law of the place where such contract was made:

Provided that—

Proviso.

(1.) Where a bill is issued out of Canada, it is not invalid by reason only that it is not stamped in accordance with the law of the place of issue ;

(2.) Where a bill, issued out of Canada, conforms, as regards requisites in form, to the law of Canada, it may, for the purpose of enforcing payment thereof, be treated as valid as between all persons who negotiate, hold or become parties to it in Canada ;

(b.) Subject to the provisions of this Act, the interpretation of the drawing, indorsement, acceptance or acceptance *suprà* protest of a bill, is determined by the law of the place where such contract is made : Drawing indorsement. &c.

Provided, that where an inland bill is indorsed in a foreign country, the indorsement shall, as regards the payer, be interpreted according to the law of Canada ; Proviso.

(c.) The duties of the holder with respect to presentment for acceptance or payment and the necessity for or sufficiency of a protest or notice of dishonor, or otherwise, are determined by the law of the place where the act is done or the bill is dishonored ; Duties of holder.

(d.) Where a bill is drawn out of but payable in Canada, and the sum payable is not expressed in the currency of Canada, the amount shall, in the absence of some express stipulation, be calculated according to the rate of exchange for sight drafts at the place of payment on the day the bill is payable ; Currency.

(e.) Where a bill is drawn in one country and is payable in another, the due date thereof is determined according to the law of the place where it is payable. (*Ibid. sec. 72.*) Due date.

(f.) If a bill or note, presented for acceptance, or payable out of Canada, is protested Evidence of protest.

for non-acceptance or non-payment, a notarial copy of the protest and of the notice of dishonor, and a notarial certificate of the service of such notice, shall be received in all courts, as *prima facie* evidence of such protest, notice and service.]

PART III.

CHEQUES ON A BANK.

Cheque defined.

72. A cheque is a bill of exchange drawn on a bank, payable on demand :

See section 2 sub-sec. (c) for definition of "Bank."

Certain provisions to apply.

2. Except as otherwise provided in this part, the provisions of this Act applicable to a bill of exchange payable on demand apply to a cheque. (*Ibid.* sec. 73.)

See Cheques compared with and distinguished from Bills of Exchange, *Merchant's Bank vs. State Bank*, Supreme Court of the United States. 10 Wallace, 647.

Presentment of cheque for payment.

73. Subject to the provisions of this Act—
(a.) Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or the person on whose account it is drawn had the right at the time of such presentment, as between him and the bank, to have the cheque paid, and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of such bank to a larger amount than he would have been had such cheque been paid ;

(b.) In determining what is a reasonable

time, regard shall be had to the nature of the instrument, the usage of trade and of banks, and the facts of the particular case ;

(c.) The holder of such cheque, as to which such drawer or person is discharged, shall be a creditor, in lieu of such drawer or person, of such bank to the extent of such discharge, and entitled to recover the amount from it. (*Ibid.* sec. 74.)

This section is very badly drawn and without Judge Chalmers explanation, would be quite unintelligible.

The effect of sub-sections a and c appears to be this:—A person draws a cheque for \$500 on his Bank. Cheque is not presented for payment within a reasonable time. The Bank becomes insolvent, the drawer having at the time sufficient funds at his credit in the Bank to meet the cheque. The drawer is discharged but the holder can rank for \$500, against the Bank. If however, drawer had no funds but was authorized to overdraw, the drawer would be discharged but the holder could not rank against Bank. See *Chalmers*, 232.

74. The duty and authority of a bank to pay a cheque drawn on it by its customer are terminated by—

Revocation of bank's authority.

(a.) Countermand of payment ;

(b.) Notice of the customer's death. (*Ibid.* sec. 75.)

Crossed Cheques.

75. Where a cheque bears across its face an addition of—

General crossing defined.

(a.) The word " bank " between two parallel transverse lines, either with or without the words " not negotiable ; " or—

(b.) Two parallel transverse lines simply, either with or without the words " not negotiable ; "

That addition constitutes a crossing, and the cheque is crossed generally :

Special crossing.

2. Where a cheque bears across its face an addition of the name of a bank, either with or without the words "not negotiable," that addition constitutes a crossing, and the cheque is crossed specially and to that bank. (*Ibid.* sec. 76.)

Crossing by drawer or after issue.
General or special.

76. A cheque may be crossed generally or specially by the drawer :

May be varied.

2. Where a cheque is uncrossed, the holder may cross it generally or specially :

Words may be added.

3. Where a cheque is crossed generally, the holder may cross it specially :

Re-crossing for collection.

4. Where a cheque is crossed generally or specially, the holder may add the words "not negotiable."

Crossing by bank.

5. Where a cheque is crossed specially the bank to which it is crossed may again cross it specially, to another bank for collection :

Uncrossing crossed cheque

6. Where an uncrossed cheque, or a cheque crossed generally, is sent to a bank for collection, it may cross it specially to itself : (*Ibid.* sec. 77.)

[7. A crossed cheque may be reopened or uncrossed by the drawer writing between the transverse lines, and initialling the same, the words "pay cash."]

Crossing in a material part of cheque.

77. A crossing authorized by this Act is a material part of the cheque ; it shall not be lawful for any person to obliterate or, except as authorized by this Act, to add to or alter the crossing. (*Ibid.* sec. 78.)

Duties of bank as to crossed cheques.

78. Where a cheque is crossed specially to more than one bank, except when crossed to another bank as agent for collection, the bank

on which it is drawn shall refuse payment thereof :

2. Where the bank on which a cheque so crossed is drawn, nevertheless pays the same, or pays a cheque crossed generally otherwise than to a bank, or, if crossed specially, otherwise than to the bank to which it is crossed, or to the bank acting as its agent for collection, it is liable to the true owner of the cheque for any loss he sustains owing to the cheque having been so paid :

Liability for improper payment.

Provided, that where a cheque is presented for payment which does not at the time of presentment appear to be crossed, or to have had a crossing which has been obliterated, or to have been added to or altered otherwise than as authorized by this Act, the bank paying the cheque in good faith and without negligence shall not be responsible or incur any liability, nor shall the payment be questioned by reason of the cheque having been crossed, or of the crossing having been obliterated or having been added to or altered otherwise than as authorized by this Act, and of payment having been made otherwise than to a bank or to the bank to which the cheque is or was crossed, or to the bank acting as its agent for collection, as the case may be. (*Ibid. sec. 79.*)

When liability does not accrue.

79. Where the bank, on which a crossed cheque is drawn, in good faith and without negligence pays it, if crossed generally, to a bank, or, if crossed specially, to the bank to which it is crossed, or to a bank acting as its agent for collection, the bank paying the cheque, and if the cheque has come into the hands of the payee, the drawer, shall respectively be entitled to the same rights and be placed in the same position as if payment of

Protection to bank and drawer where cheque is crossed.

the cheque had been made to the true owner thereof. (*Ibid. sec. 80.*)

Effect of crossing on holder.

80. Where a person takes a crossed cheque which bears on it the words "not negotiable," he shall not have and shall not be capable of giving a better title to the cheque than that which had the person from whom he took it. (*Ibid. sec. 81.*)

Protection to collecting bank.

81. Where a bank, in good faith and without negligence, receives for a customer payment of a cheque crossed generally or specially to itself, and the customer has no title, or a defective title thereto, the bank shall not incur any liability to the true owner of the cheque by reason only of having received such payment. (*Ibid. sec. 82.*)

The practice of crossing cheques originated at the clearing-house; the clerks of the different bankers who did business there having been accustomed to write across the cheques the names of their employers so as to enable the clearing-house clerks to make up their accounts. It afterwards became a common practice to cross cheque which were not intended to go through the clearing-house at all, with the name of a bank or banker, or with the words "& Co." The effect of this custom is that where a cheque is thus crossed, bankers generally refuse to pay it to any one except a banker; and if they do pay it to a person not a banker, they consider that they do so at their peril, in the event of the party to whom the payment is made not being entitled to receive it. The object is, that the person for whose use the money was received, may be easily traced.

In *Bellamy v. Marjoribanks*, 7 Ex-chequer Reports, 402, Baron Parke is reported as saying:

"There can be no doubt but that the usage of crossing cheques is highly beneficial to the public. Cheques are in their essential character payable to bearer; they are in many respects treated as bank notes, for which of late years

"they have been largely substituted; but like all other things they are liable to be mislaid, or lost, or stolen, and may get into the hands of persons who are not entitled to receive payment of them. It is manifestly therefore a great protection and safe guard to the real owner, that there should exist the means of tracing and ascertaining for whose use the money paid on a cheque is received, and to whom the money actually goes. Payment through a banker secures this object. We think therefore, that it is a matter of great public advantage and benefit that this custom or usage should be maintained; and we think it well may without at all improperly trenching upon or restricting the negotiability of cheques."

PART IV.

PROMISSORY NOTES.

§2. A promissory note is an unconditional Promissory not defined. promise in writing made by one person to another, signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money, to, or to the order of, a specified person, or to bearer:

See note to sec. 3.

An instrument promising to do anything in addition to the payment of money is not a Promissory Note, but in New-York an instrument reading "I promise to pay C. or order 100 dollars or in goods on demand" was held to be a valid note. *Ostater v. Wilson*, 31 Barb. 307.

An I. O. U. is merely an acknowledgement of debt, and is not a Promissory Note. *Gould vs. Coombs*, 1 C. B. 543.

2. An instrument in the form of a note payable to maker's order is not a note within the meaning of this section, unless and until it is indorsed by the maker: Indorsement by maker.

Collateral
pledge does
not invalidate.

3. A note is not invalid by reason only that it contains also a pledge of collateral security with authority to sell or dispose thereof :

Inland and
foreign.

4. A note which is, or on the face of it purports to be, both made and payable within Canada, is an inland note : any other note is a foreign note. (*Ibid. sec. 83.*)

Delivery ne-
cessary.

83. A promissory note is inchoate and incomplete until delivery thereof to the payee or bearer. (*Ibid. sec. 84.*)

Inchoate *i. e.* incomplete and inoperative.

Joint and
several notes.

84. A promissory note may be made by two or more makers, and they may be liable thereon jointly and severally, according to its tenor :

As to number.

2. Where a note runs " I promise to pay," and is signed by two or more persons, it is deemed to be their joint and several note. (*Ibid. sec. 85.*)

Note payable
on demand.

85. *Where a note payable on demand has been indorsed, it must be presented for payment within a reasonable time of the indorsement : if it is not so presented, the indorser is discharged : [if, however, with the assent of the indorser it has been delivered as a collateral or continuing security it need not be presented for payment so long as it is held as such security :]*

By sec. 10 read with sec. 88 a note is payable on demand which is expressed to be so payable, or at sight, or on presentation or in which no time for payment is specified.

Reasonable
time.

2. In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade, and the facts of the particular case :

3. Where a note payable on demand is negotiated, it is not deemed to be overdue, for the purpose of affecting the holder with defects of title of which he had no notice, by reason that it appears that a reasonable time for presenting it for payment has elapsed since its issue. (*Ibid. sec. 86.*)

Defects without notice.

86. Where a promissory note is in the body of it made payable at a particular place, it must be presented for payment at that place. But the maker is not discharged by the omission to present the note for payment on the day that it matures. But if any suit or action is instituted thereon against him before presentation, the costs thereof shall be in the discretion of the court. If no place of payment is specified in the body of the note, presentment for payment is not necessary in order to render the maker liable :

Presentment of note for payment.

HON. MR. KAULBACH:—Is that not a large discretion allowed to the Court? If the Note is not presented, why not make the party who sues, liable for the costs?

HON. MR. ABBOTT:—Because the party who made the note may not have provided any money at the place of presentment, and that relieves the holder from the necessity of presenting it there. The judge will only exercise discretion in cases where the money is provided at the place of payment. *Senate Debates 1890, P. 506.*

2. Presentment for payment is necessary in order to render the indorser of a note liable. Liability.

3. Where a note is in the body of it made payable at a particular place, presentment at that place is necessary in order to render an indorser liable ; but when a place of payment is indicated by way of memorandum only, presentment at that place is sufficient to render the indorser liable, but a presentment to the Place for presentment.

maker elsewhere, if sufficient in other respects, shall also suffice. (2) (*Ibid. sec. 87.*)

(2.) Article 145 Code of Civil Procedure provides: "In the case of Promissory Notes or Bills of Exchange payable at a particular place, they are presumed, as against the maker or acceptor, to have been presented at that place at maturity, unless the exception founded upon such want of presentation is accompanied with an affidavit, that, at the time they became due, provision had been made for their payment at the specified place."

Liability of maker.

87. The maker of a promissory note, by making it—

(a.) Engages that he will pay it according to its tenor ;

(b.) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse. (*Ibid. sec. 88.*)

Application of part II to notes.

88. Subject to the provisions in this part, and except as by this section provided, the provisions of this Act relating to bills of exchange apply, with the necessary modifications, to promissory notes :

Corresponding terms.

2. In applying those provisions the maker of a note shall be deemed to correspond with the acceptor of a bill, and the first indorser of a note shall be deemed to correspond with the drawer of an accepted bill payable to drawer's order :

What provisions do not apply.

3. The following provisions as to bills do not apply to notes, namely, provisions relating to—

(a.) Presentment for acceptance ;

(b.) Acceptance ;

(c.) Acceptance *supra* protest ;

(d.) Bills in a set :

As to foreign note.

4. Where a foreign note is dishonored, protest thereof is unnecessary, except for the preservation of the liabilities of indorsers. (*Ibid. sec. 89.*)

PART V.

SUPPLEMENTARY.

89. A thing is deemed to be done in good ^{Good faith.} faith within the meaning of this Act, where it is in fact done honestly whether it is done negligently or not. (*Ibid. sec. 90.*)

90. Where, by this Act, any instrument or ^{Signature.} writing is required to be signed by any person, it is not necessary that he should sign it with his own hand, but it is sufficient if his signature is written thereon by some other person by or under his authority :

A pencil signature has been held sufficient *Geary vs. Physic* 5 B C. 234.

Where a Note ran "I William Smith promise to pay" instead of "I promise to pay" with signature in the usual place; Held:—a sufficient signature *Taylor vs. Dobbin*, 1 Stra. 399.

2. *In the case of a corporation, where, by this* ^{As to corporations.} *Act, any instrument or writing is required to be signed, it is sufficient if the instrument or writing is duly sealed with the corporate seal; but nothing in this section shall be construed as requiring the bill or note of a corporation to be under seal.* (*Ibid. sec. 91.*)

91. Where, by this Act, the time limited ^{Computation of time.} for doing any act or thing is less than three days, in reckoning time, non-business days are excluded : "non-business days," for the purposes of this Act, mean the days mentioned in the fourteenth section of this Act ; any other day is a business day. (*Ibid. sec. 92.*)

When noting
is equivalent
to protest.

92. For the purposes of this Act, where a bill or note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill or note has been noted for protest before the expiration of the specified time or the taking of the proceeding ; and the formal protest may be extended at any time thereafter as of the date of the noting. (*Ibid. sec. 93.*)

Protest when
notary is not
accessible.

93. Where a dishonored bill is authorized or required to be protested, and the services of a notary cannot be obtained at the place where the bill is dishonored, any justice of the peace resident in the place may present and protest such bill and give all necessary notices, and shall have all the necessary powers of a notary in respect thereto :

Under the Imperial act these formalities may be observed through "any householder or substantial resident."

Expenses.

[2. The expense of noting and protesting any bill or note, and the postages thereby incurred, shall be allowed and paid to the holder in addition to any interest thereon :]

Fees charge-
able.

[3. Notaries may charge the fees in each Province heretofore allowed them :]

Forms.

4. The forms in the first schedule to this Act may be used in noting or protesting any bill or note and in giving notice thereof. A copy of the bill or note and indorsement may be included in the forms, or the original bill or note may be annexed and the necessary changes in that behalf made in the forms :

Evidence of
presentation,
dishonor and
notice.

5. A protest of any bill or note, and any copy thereof as copied by the notary or justice of the peace, shall, in any action be *prima facie* evidence of presentation and dishonor, and

also of service of notice of such presentation and dishonor as stated in such protest. (*Ibid.* sec. 95.)

94. The provisions of this Act as to crossed Dividend war-
cheques shall apply to a warrant for payment rants may be
of dividend. (*Ibid.* sec. 95.) crossed.

95. The enactments mentioned in the second Repeal.
schedule to this Act are hereby repealed, as
from the commencement of this Act, to the
extent in that schedule mentioned :

Provided, that such repeal shall not affect Proviso.
anything done or suffered, or any right, title
or interest acquired or accrued before the
commencement of this Act, or any legal pro-
ceeding or remedy in respect of any such
thing, right, title or interest: (*Ibid.* sec. 96.)

2. Nothing in this Act or in any repeal "The Bank
affected thereby shall affect the provisions of Act," not
"The Bank Act :"

3. The Act of the Parliament of Great Brit- Imperial Acts
ain passed in the fifteenth year of the reign of 15 Geo. III,
His late Majesty George III, intituled "An c. 51, and 17,
Act to restrain the negotiation of Promissory Geo. III, c.
Notes and Inland Bills of Exchange under 30, not to
apply.
a limited sum within that part of Great Britain
called England," and the Act of the said Par-
liament passed in the seventeenth year of His
said Majesty's reign, intituled "An Act for
further restraining the negotiation of Promis-
sory Notes and Inland Bills of Exchange under
a limited sum within that part of Great Britain
called England," shall not extend to or be in
force in any Province of Canada, nor shall the
said Acts make void any bills, notes, drafts or
orders which have been or may be made or
uttered therein.

There is no limit as to the sum for which a Bill of Exchange, Promissory Note or Cheque, may be drawn.

Construction
with other
Acts. &c.

96. Where any Act or document refers to any enactment repealed by this Act, the Act or document shall be construed and shall operate as if it referred to the corresponding provisions of this Act. (*Ibid. sec. 99.*)

Commence-
ment of Act.

[**97.** This Act shall come into force on the first day of September next.]

sh a Bill
may be

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the Act
oper-
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on the

FIRST SCHEDULE.

FORM A.

NOTING FOR NON-ACCEPTANCE.

(Copy of Bill and Indorsements.)

On the 18 , the above Bill was, by me, at
the request of , presented for acceptance to
E. F., the drawee, personally (*or*, at his residence, office
or usual place of business), in the city (town *or* village)
of and I received for answer, "."
The said bill is therefore noted for non-acceptance.

A. B.,
Notary Public.

(Date and place.) 18

Due notice of the above was by me served { A. B., }
upon { C. D., }

the { drawer, } personally, on the day of
 { indorser, }

(*or*, at his residence, office or usual place of business)
in , on the day of

(*or*, by depositing such notice, directed to him, at
 , in Her Majesty's post office in the city [town *or*
village], on the day of , and prepaying
the postage thereon.)

A. B.,
Notary Public.

(Date and place.) 18

FORM B.

PROTEST FOR NON-ACCEPTANCE OR FOR NON-PAYMENT
OF A BILL PAYABLE GENERALLY.*(Copy of Bill and Indorsements.)*

On this day of , in the year 18 ,
 I, A. B., notary public for the Province of ,
 dwelling at , in the Province of , at the
 request of , did exhibit the original bill of
 exchange, whereof a true copy is above written, unto
 E. F., the { drawee } thereof personally (or, at his re-
 { acceptor } sidence, office or usual place of business) in
 and, speaking to himself (or his wife, his clerk, or his
 servant, &c.,) did demand { acceptance } thereof ; unto
 { payment }
 which demand { he } answered : “ .”
 { she }

Wherefore I, the said notary, at the request aforesaid,
 have protested and, by these presents do protest against
 the acceptor, drawer and indorsers (or drawer and in-
 dorsers) of the said bill, and other parties thereto or
 therein concerned, for all exchange, re-exchange, and
 all costs, damages and interest, present and to come,
 for want of { acceptance } of the said bill.
 { payment }

All of which I attest by my signature.

(Protested in duplicate.)

A. B.,

Notary Public.

FORM C.

PROTEST FOR NON-ACCEPTANCE OR FOR NON-PAYMENT OF
A BILL PAYABLE AT A STATED PLACE.

(Copy of Bill and Indorsements.)

On this day of , in the year 18 , I, A. B.,
notary public for the Province of , dwelling
at , in the Province of , at the request
of , did exhibit the original bill of exchange,
whereof a true copy is above written, unto E. F. the

{ drawee } thereof, at , being the stated
{ acceptor }

place where the said bill is payable, and there, speaking

to did demand { acceptance } of the
{ payment }

said bill; unto which demand he answered: “ .”

Wherefore I, the said notary, at the request aforesaid,
have protested, and by these presents do protest against
the acceptor, drawer and indorsers (or drawer and in-
dorsers) of the said bill, and all other parties thereto or
therein concerned, for all exchange, re-exchange, costs,
damages and interest, present and to come, for want of

{ acceptance } of the said bill.
{ payment }

All of which I attest by my signature.

(Protested in duplicate.)

A. B.,

Notary Public.

FORM D.

PROTEST FOR NON-PAYMENT OF A BILL NOTED, BUT NOT
PROTESTED, FOR NON-ACCEPTANCE.

If the protest is made by the same notary who noted the bill, it should immediately follow the act of noting and memorandum of service thereof, and begin with the words "and afterwards on, &c.," continuing as in the last preceding form, but introducing between the words "did" and "exhibit," the word "again," and, in a parenthesis, between the words "written" and "unto," the words: "and which bill was by me duly noted for non-acceptance on the
 day of "

But if the protest is not made by the same notary, then it should follow a copy of the original bill and indorsements and noting marked on the bill — and then in the protest introduce, in a parenthesis, between the words "written" and "unto," the words: and which bill was on the

day of , by , notary
 public for the Province of , noted for non-
 acceptance, as appears by his note thereof marked on
 the said bill."

FORM E.

PROTEST FOR NON-PAYMENT OF A NOTE PAYABLE
GENERALLY.*(Copy of Note and Indorsements.)*

On this day of , in the year 18 ,
 I, A. B., notary public for the Province of ,
 dwelling at , in the Province of , at the
 request of , did exhibit the original promissory
 note, whereof a true copy is above written, unto
 , the promisor, personally (*or*, at his resi-
 dence, office *or* usual place of business), in , and
 speaking to himself (*or* his wife, his clerk *or* his servant,
 &c.), did demand payment thereof ; unto which demand

{ he } answered : “ .”
 { she }

Wherefore I, the said notary, at the request aforesaid,
 have protested, and by these presents do protest against
 the promisor and indorsers of the said note, and all other
 parties thereto or therein concerned, for all costs,
 damages and interest, present and to come, for want of
 payment of the said note.

All of which I attest by my signature.

(Protested in duplicate.)

A. B.,
Notary Public.

FORM F.

PROTEST FOR NON-PAYMENT OF A NOTE PAYABLE
AT A STATED PLACE.*(Copy of Note and Indorsements.)*

On this day of , in the year 18 ,
I, A. B., notary public for the Province of ,
dwelling at , in the Province of ,
at the request of , did exhibit the original
promissory note, whereof a true copy is above written,
unto the promisor, at , being the
stated place where the said note is payable, and there,
speaking to did demand payment of the said
note, unto which demand he answered : “ .”

Wherefore I, the said notary, at the request aforesaid,
have protested, and by these presents do protest against
the promisor and indorsers of the said note, and all
other parties thereto or therein concerned, for all costs,
damages and interest, present and to come, for want of
payment of the said note.

All which I attest by my signature.

(Protested in duplicate.)

A. B.,
Notary Public.

FORM G.

NOTARIAL NOTICE OF A NOTING, OR OF A PROTEST
FOR NON-ACCEPTANCE, OR OF A PROTEST
FOR NON-PAYMENT OF A BILL.

(Place and date of Noting or of Protest.)

1st.

To P. Q. (the drawer.)

at

Sir,

Your bill of exchange for \$, dated at
the , upon E.F., in favor of C.D., payable days

after { sight, }
date } was this day, at the request of

duly { noted } by me for { non-acceptance. }
{ protested } { non-payment. }

A.B.,

Notary Public.

(Place and date of Noting or of Protest.)

2nd.

To C. D. (indorser),

(or F. G.)

at

Sir,

Mr. P.Q.'s bill of exchange for \$, dated at
the , upon E.F., in your favor (or in favor of C.D.)

payable days after { sight, }
date, } and by you indors-

ed, was this day, at the request of , duly

{ noted } by me for { non-acceptance. }
{ protested } { non-payment. }

A. B.,

Notary Public.

FORM H.

**NOTARIAL NOTICE OF PROTEST OF NON-
PAYMENT OF A NOTE.**

To _____, _____
at _____, _____

Sir,

Mr. P.Q.'s promissory note for \$ _____, dated at,

, the payable $\left\{ \begin{array}{l} \text{months} \\ \text{days} \\ \text{on } ____ \end{array} \right\}$ after date to

**{ you }
E. F.** or order, and indorsed by you, was this day, at
the request of _____, duly protested by me for non-
payment.

A. B.,
Notary Public.

FORM I.

**NOTARIAL SERVICE OF NOTICE OF A PROTEST FOR NON-
ACCEPTANCE OR NON-PAYMENT OF A BILL, OR OF
NON-PAYMENT OF A NOTE (to be subjoined to the Protest.)**

And afterwards, I, the aforesaid protesting notary public, did serve due notice, in the form prescribed by law,

of the foregoing protest for $\left\{ \begin{array}{l} \text{non-acceptance} \\ \text{non-payment} \end{array} \right\}$ of the

{ bill } thereby protested upon { P. Q., } the
 { note }

{ drawer
indorsers } personally, on the

day of (or, at his residence, office, or usual place of business) in _____, on the _____ day of _____;

(or, by depositing such notice, directed to the said

{ P. Q., } at _____, in Her Majesty's post office in _____
{ C. D., }

on the day of ,

and prepaying the postage thereon).

In testimony whereof, I have, on the last mentioned day and year, at aforesaid, signed these presents.

A. B.,
Notary Public.

of the said { bill } and all other parties thereto and
 { note }
 therein concerned, for all exchange, re-exchange, and all
 costs, damages and interest present and to come, for want of
 { acceptance } of the said { bill. }
 { payment } { note. }

All which is by these presents attested by the signature
 of the said (*the witness*) and by my hand and seal.

(Protested in duplicate.)

(*Signature of the witness.*)

(*Signature and seal of the J. P.*)

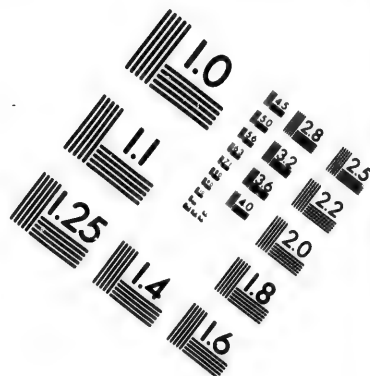
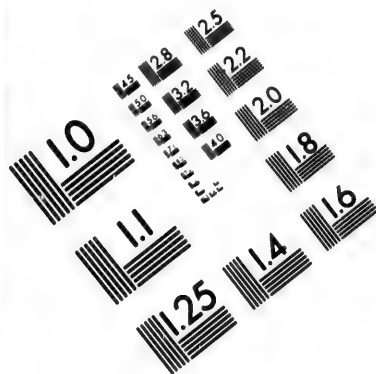
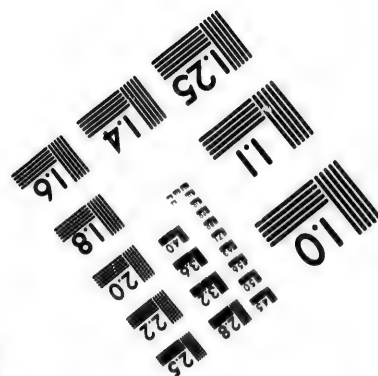
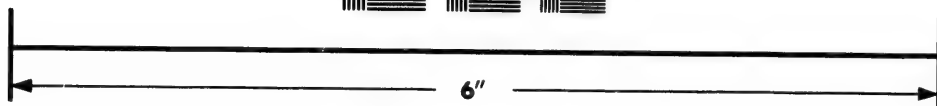
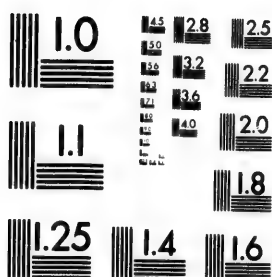


IMAGE EVALUATION TEST TARGET (MT-3)



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Sciences
Corporation

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

18 20 22 25
E 3 28
E 3 32
E 3 36
E 3 40

10 01
11 11
12 12

SECOND SCHEDULE.

ENACTMENTS REPEALED.

Province and Chapter.	Title of Act and extent of repeal.
Dominion of Canada : Chap. 123, Revised Statutes	An Act respecting Bills of Exchange and Promissory Notes.—The whole Act.
Province of Quebec : Civil Code of Lower Canada	Articles 2,279 to 2,354, both inclusive [*]
Nova Scotia : Revised Statutes, third series. cap. 82.....	"Of Bills of Exchange and Promissory Notes." Section 2. The other sections of this chapter have been heretofore repealed.
New Brunswick : Revised Statutes, chap. 116,	"Of Bills, Notes and Choses in Action." Section 2. The other sections of this chapter have been heretofore repealed.
30 Vic., 1867, chap. 34.	An Act to amend chap. 116 of the Revised Statutes, "Of Bills, Notes and Choses in Action ;" also Act 12th Victoria, chapter 39, relating thereto. Section 1.

[*Except in so far as such articles, or any of them, relate to evidence in regard to bills of exchange, cheques and promissory notes.] These articles are 2341 and 2342, which read as follows: **2341.** In the investigation of facts, in actions or suits founded on bills of exchange drawn or endorsed either by traders or other persons, recourse must be had to the laws of England in force at the time specified in the last preceding article (30th May 1849) and as additional evidence is required or can be adduced by reason of any party to the bill not being a trader. **2342.** The parties in the actions or suits specified in the last preceding article may be examined under oath as provided in the title of Obligations.

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